16 C.J.S. Constitutional Law § 355

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

B. Legislative Powers and Delegation Thereof

4. Delegation of Powers

d. Delegation to Judiciary

§ 355. General rule of nondelegability of legislative powers to judiciary

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2402 to 2404

Powers which are purely legislative in character may not be delegated to the judiciary, but the legislature may delegate functions which are merely ministerial or which are of a mixed legislative and judicial or quasi-judicial nature. The power to determine the existence of certain facts on which the operation of a statute depends may be delegated by the legislature to the courts.

It is a well-established general rule that except where the constitution expressly directs or permits it,[1] power which is legislative in character may not be delegated to the judiciary,[2] directly or indirectly,[3] and even with respect to private and local matters.[4] Thus, the legislature may not delegate to the judiciary the power to make,[5] amend,[6] suspend,[7] or revoke or repeal a statute.[8] Nor may the legislature delegate to the judiciary the power to determine when a statute will go into effect[9] or to determine whether vague statutory terms have been satisfied.[10] Moreover, the legislature may not delegate to the judiciary discretionary authority with regard to matters of fiscal or other governmental policy.[11] For instance, the question of whether certain acts are in the public interest or conducive to the public health or welfare.[12] Lastly, the legislature may not delegate matters to the

judiciary which are expressly committed to the legislature by the constitution,[13] such as the power to establish inferior courts and fix the jurisdiction thereof.[14]

Footnotes

1 Ky.—Boone County v. Town of Verona, 190 Ky. 430, 227 S.W. 804 (1921).
Nev.—Gay v. District Court of Tenth Judicial District in and for Clark County, 41 Nev. 330, 171 P. 156, 3 A.L.R. 224 (1918).
Tex.—Ashford v. Goodwin, 103 Tex. 491, 131 S.W. 535 (1910).

2 U.S.—Joseph v. Hyman, 659 F.3d 215 (2d Cir. 2011).
Cal.—Abbott Laboratories v. Franchise Tax Bd., 175 Cal. App. 4th 1346, 96 Cal. Rptr. 3d 864 (2d Dist. 2009), as modified, (Aug. 6, 2009).
Ga.—Turner County v. City of Ashburn, 293 Ga. 739, 749 S.E.2d 685 (2013).
Okla.—Yocum v. Greenbriar Nursing Home, 2005 OK 27, 130 P.3d 213 (Okla. 2005).
Wash.—Sackett v. Santilli, 146 Wash. 2d 498, 47 P.3d 948 (2002).
W. Va.—Application of Dailey, 195 W. Va. 330, 465 S.E.2d 601 (1995).
Nonjudicial functions not delegable to judiciary
Colo.—Walgreen Co. v. Charnes, 819 P.2d 1039 (Colo. 1991).
Ill.—People ex rel. Devine v. Murphy, 181 Ill. 2d 522, 230 Ill. Dec. 220, 693 N.E.2d 349 (1998).
W. Va.—Application of Dailey, 195 W. Va. 330, 465 S.E.2d 601 (1995).
Judicial review
To place ultimate determination in the courts through judicial review of municipality or county's legislative action violates constitutional principle of separation of powers.
Colo.—Colorado Land Use Commission v. Board of County Com'rs of Larimer County, 199 Colo. 7, 604 P.2d 32 (1979).

3 Tex.—Southwestern Bell Telephone Co. v. State, 523 S.W.2d 67 (Tex. Civ. App. Austin 1975), writ granted, (June 4, 1975) and judgment rev'd on other grounds, 526 S.W.2d 526 (Tex. 1975).

4 Tenn.—Henderson County v. Wallace, 173 Tenn. 184, 116 S.W.2d 1003 (1938).

5 Ind.—Clemons v. State, 162 Ind. App. 50, 317 N.E.2d 859 (1974).
Ky.—Com. v. Raines, 847 S.W.2d 724 (Ky. 1993) (overruled on other grounds by, Com. v. Howard, 969 S.W.2d 700 (Ky. 1998)) and (abrogated by, Commonwealth v. Carman, 2015 WL 737948 (Ky. 2015)).
Mass.—City of Boston v. City of Chelsea, 212 Mass. 127, 98 N.E. 620 (1912).

6 Ky.—Lunsford v. Com., 436 S.W.2d 512 (Ky. 1969).

7 Tex.—Ex parte Smythe, 56 Tex. Crim. 375, 120 S.W. 200 (1909).

8 Ind.—Square D. Co. v. O'Neal, 225 Ind. 49, 72 N.E.2d 654 (1947).
Ky.—Lunsford v. Com., 436 S.W.2d 512 (Ky. 1969).
Wash.—State v. Pavelich, 153 Wash. 379, 279 P. 1102 (1929).
Repeal of statute
Statute providing that an amendment to an act would be repealed if the original act was held constitutional in a pending case was not an unconstitutional delegation of legislative authority and did not infringe on the separation of powers.
Mich.—Council of Organizations and Others for Educ. About Parochiaid, Inc. v. Governor, 455 Mich. 557, 566 N.W.2d 208, 120 Ed. Law Rep. 265, 78 A.L.R.5th 767 (1997).

9 Ill.—People ex rel. Bernat v. Bicek, 405 Ill. 510, 91 N.E.2d 588 (1950).

10 Or.—State v. Ray, 302 Or. 595, 733 P.2d 28 (1987).
Violation of oath of office
Statute automatically creating a vacancy upon a public employee's conviction for committing a "crime involving the violation of his oath of office" was not so vague as to constitute an unconstitutional delegation of legislative power to the courts.
U.S.—Whitfield v. Fraser, 272 F. Supp. 2d 340 (S.D. N.Y. 2003).

11 Iowa—In Interest of D.C.V., 569 N.W.2d 489 (Iowa 1997).

Neb.—Tyson v. Washington County, 78 Neb. 211, 110 N.W. 634 (1907).
N.Y.—Long v. Johnson, 70 Misc. 308, 127 N.Y.S. 756 (Sup 1910).

12 U.S.—In re Penn Central Transp. Co., 382 F. Supp. 821 (E.D. Pa. 1974), aff'd, 510 F.2d 969 (3d Cir. 1975) and aff'd, 510 F.2d 970 (3d Cir. 1975) and aff'd, 510 F.2d 970 (3d Cir. 1975) and judgment aff'd, 510 F.2d 970 (3d Cir. 1975).
Ill.—Fields Jeep-Eagle, Inc. v. Chrysler Corp., 163 Ill. 2d 462, 206 Ill. Dec. 694, 645 N.E.2d 946 (1994).
Nev.—Desert Chrysler-Plymouth, Inc. v. Chrysler Corp., 95 Nev. 640, 600 P.2d 1189 (1979).
Wis.—Westring v. James, 71 Wis. 2d 462, 238 N.W.2d 695 (1976).

13 Mont.—State v. District Court of the Fourteenth Judicial District in and for Broadwater County, 50 Mont. 134, 145 P. 721 (1914).

14 U.S.—U.S. v. Bink, 74 F. Supp. 603 (D. Or. 1947).
Iowa—Warren County v. Judges of Fifth Judicial Dist., 243 N.W.2d 894 (Iowa 1976).
As to delegation to judiciary of power to exercise discretion in administration of justice, generally, see § 357.
As to the appointment of magistrates, see § 360.

Establishment of divorce division

Ill.—People ex rel. Bernat v. Bicek, 405 Ill. 510, 91 N.E.2d 588 (1950).

End of Document

16 C.J.S. Constitutional Law § 356

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

B. Legislative Powers and Delegation Thereof

4. Delegation of Powers

d. Delegation to Judiciary

§ 356. General rule of nondelegability of legislative powers to judiciary—Exceptions

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2402 to 2404

A legislative function may be delegated to the judiciary if adequate standards and guidelines for its exercise accompany such delegation, of if the function is administrative or ministerial.

While the legislature has no right to confer on the judiciary a power in terms so broad and meaning so vague that the application or nonapplication of the law depends wholly on the individual opinion and predilections of the trial judge,[1] a legislative function may be delegated to the judiciary if adequate standards and guidelines for its exercise accompany such delegation[2] so as to protect the individual from arbitrary or discriminatory exercises of discretion.[3] In determining whether such a delegation of legislative power is unconstitutional, the important factors include standards, which may be found in statutes in pari materia with the one challenged and which may be general or specific, safeguards, which may suffice even in the absence of detailed standards, the practical necessities of the public interest, and the difficulty or impossibility of calling for the legislature to govern in a given area.[4]

Also, the legislature may delegate to the courts the performance of administrative or ministerial functions,[5] where the constitution does not so forbid,[6] and if the delegated powers and functions are reasonably incidental to the fulfillment of judicial duties[7] or appropriate to the central mission of the judiciary.[8] The legislature may delegate to the courts the power to carry out in detail the legislative will.[9] Duties of a mixed legislative and judicial or quasi-judicial character may be conferred or imposed by the legislature on the courts.[10] However, the legislative powers that may be delegated to the courts are very limited.[11] In fact, the judiciary is not constitutionally obliged to accept these delegations and may decline to do so because of incongruity or undue burden.[12]

Determination of facts.

The judiciary may be authorized to determine the existence of certain facts on which the operation of a statute depends,[13] or to appoint a commissioner for the purpose of making such a determination,[14] particularly where it is difficult or impracticable to lay down a definite comprehensive rule for application of a statute.[15] While it is generally not permissible to delegate to a court a fact-finding function, rather than the determination of an actual case or controversy,[16] judicial determination of facts is not lawmaking but a proper exercise of judicial discretion where standards established by the legislature are sufficient to satisfy constitutional requirements.[17]

Footnotes

1 Nev.—Galloway v. Truesdell, 83 Nev. 13, 422 P.2d 237 (1967).
Pa.—Com. v. Franklin, 172 Pa. Super. 152, 92 A.2d 272 (1952).
Tex.—In re Johnson, 554 S.W.2d 775 (Tex. Civ. App. Corpus Christi 1977), writ refused n.r.e., 569 S.W.2d 882 (Tex. 1978).

2 U.S.—DiFilippo v. Beck, 520 F. Supp. 1009 (D. Del. 1981).
Colo.—People v. Smith, 638 P.2d 1 (Colo. 1981).
Iowa—In Interest of D.C.V., 569 N.W.2d 489 (Iowa 1997).
Okla.—Nelson v. Nelson, 1998 OK 10, 954 P.2d 1219 (Okla. 1998).

3 Ind.—Clemons v. State, 162 Ind. App. 50, 317 N.E.2d 859 (1974).
Iowa—In Interest of D.C.V., 569 N.W.2d 489 (Iowa 1997).

4 Iowa—Warren County v. Judges of Fifth Judicial Dist., 243 N.W.2d 894 (Iowa 1976).

5 U.S.—Nelson v. First Nat. Bank, 42 F.2d 30 (C.C.A. 8th Cir. 1930).
Fla.—State v. Duval County, 76 Fla. 180, 79 So. 692 (1918).
Agent
Legislature may designate judicial branch as its agent for certain purposes.
Ariz.—Broomfield v. Maricopa County, 112 Ariz. 565, 544 P.2d 1080 (1975).
N.J.—Application of Schragger, 58 N.J. 274, 277 A.2d 212 (1971).
Congress as lacking expertise
Nondelegation doctrine recognizes that the Constitution vests the legislative power exclusively in Congress, and under the doctrine of separation of powers, Congress must exercise that power rather than delegate it to the executive or judicial branches; nevertheless, given the realities of modern rulemaking, Congress has neither the time nor the expertise to do it all, and instead, it must have help.
Ky.—Board of Trustees of Judicial Form Retirement System v. Attorney General of Com., 132 S.W.3d 770 (Ky. 2003).

6 U.S.—Nelson v. First Nat. Bank, 42 F.2d 30 (C.C.A. 8th Cir. 1930).
Conn.—Adams v. Rubinow, 157 Conn. 150, 251 A.2d 49 (1968).
Minn.—Reserve Min. Co. v. Herbst, 256 N.W.2d 808 (Minn. 1977).

7 Nev.—Desert Chrysler-Plymouth, Inc. v. Chrysler Corp., 95 Nev. 640, 600 P.2d 1189 (1979).

8 U.S.—Mistretta v. U.S., 488 U.S. 361, 109 S. Ct. 647, 102 L. Ed. 2d 714 (1989).

9 Mo.—State, on Inf. of Killam, v. Colbert, 273 Mo. 198, 201 S.W. 52 (1918).

Manner and method of execution

Legislature can confer upon the judicial branch of government wide discretion in the manner and method for execution of statutes validly adopted.

Iowa—Graham v. Worthington, 259 Iowa 845, 146 N.W.2d 626 (1966).

Vt.—Vermont Educational Buildings Financing Agency v. Mann, 127 Vt. 262, 247 A.2d 68 (1968).

10 Ill.—Board of Ed. of Waverly Community Unit School Dist. No. 6 v. Nickell, 410 Ill. 98, 101 N.E.2d 438 (1951).

Minn.—In re Koochiching County Taxes, 146 Minn. 87, 177 N.W. 940 (1920).

11 Wis.—Westring v. James, 71 Wis. 2d 462, 238 N.W.2d 695 (1976).

12 N.J.—Application of Schragger, 58 N.J. 274, 277 A.2d 212 (1971).

13 Ga.—Turner County v. City of Ashburn, 293 Ga. 739, 749 S.E.2d 685 (2013).

Ill.—People ex rel. Royal v. Cain, 410 Ill. 39, 101 N.E.2d 74 (1951).

Iowa—Graham v. Worthington, 259 Iowa 845, 146 N.W.2d 626 (1966).

14 Mass.—In re Opinion of the Justices, 261 Mass. 556, 159 N.E. 70 (1927).

15 Mich.—Tribbett v. Village of Marcellus, 294 Mich. 607, 293 N.W. 872 (1940).

16 Nev.—Desert Chrysler-Plymouth, Inc. v. Chrysler Corp., 95 Nev. 640, 600 P.2d 1189 (1979).

17 Ind.—Clemons v. State, 162 Ind. App. 50, 317 N.E.2d 859 (1974).

End of Document

16 C.J.S. Constitutional Law § 357

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

B. Legislative Powers and Delegation Thereof

4. Delegation of Powers

d. Delegation to Judiciary

§ 357. Administration of justice

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2403, 2404

The power to exercise discretion in, and to prescribe rules of practice and procedure for, the administration of justice may be delegated to the judiciary, but the legislature may not delegate authority to the judiciary to make legislative rules.

The legislature may delegate to the judiciary the power to exercise discretion in, and to prescribe rules for, the administration of justice[1] and may provide that while such rules are operative, inconsistent statutory provisions will be suspended.[2] The legislature may also authorize the judiciary to terminate judicial positions,[3] to designate areas of courthouses which are to be declared "weapons-free,"[4] or to make general rules and forms governing pleading, practice, and procedure,[5] including rules relating to terms of court,[6] and the taxation of costs.[7]

Likewise, the legislature may delegate to the judiciary the power to make rules for the drawing of grand jurors by the jury commissioners[8] and the power to determine at what terms of court grand jurors will be drawn and required to attend.[9] It may also delegate to the judiciary the power to determine whether to charge a jury orally or in writing[10] and whether an appeal is

to be heard by one or more judges.[11] However, the legislature may not delegate to the courts the power to promulgate rules in connection with the enforcement of a statute which are primarily legislative in their nature.[12]

Appeal from administrative board or agency.

A statute authorizing an appeal from an administrative board to determine whether an act or decision of the board is valid or otherwise does not constitute a delegation of legislative power.[13] A statutory grant of power of judicial review de novo of an administrative board's action is not unconstitutional as an attempt to vest legislative power in the courts where such power is inherently and historically a judicial function[14] or where such "de novo" hearing means only a trial or appellate review to determine whether a board acted arbitrarily, capriciously, or unreasonably.[15] However, a statute which purports to delegate to the courts de novo review of an exercise of legislative power in the sense that the court may substitute its own judgment for that of an administrative agency to which the legislature has appropriately delegated such legislative power is unconstitutional.[16]

Rules for discipline of attorneys and judges.

The legislature may also delegate the power to make rules for the discipline of attorneys.[17] So, a statute providing for an investigation of charges against an attorney by commissioners of the state bar, subject to review by the supreme court, is not invalid as delegating legislative powers to the court.[18] Moreover, a statute creating a special court to hear disbarment proceedings has been determined not to delegate legislative power.[19] However, a statute giving a board of law examiners power to initiate complaints against attorneys, and to hear and determine their right to practice law, has been ruled invalid as creating a judicial tribunal with legislative powers.[20]

A federal statute is not unconstitutional on its face, under the separation of powers doctrine, as allowing members of judiciary to sanction a judge for his or her conduct while acting in, and deciding, cases assigned to him or her.[21] Moreover, a statute providing for the censure or removal of a judge by a state's highest court has been upheld as a constitutional delegation of powers by the legislature to the judicial branch.[22] However, there is also authority that if a person is a "judicial officer" within the meaning of the state constitution, the legislature may not delegate the power of removal of that person to the supreme judicial court.[23]

Juvenile court.

Statutes relating to a determination of juvenile court jurisdiction have generally not been ruled to be an unconstitutional delegation of legislative power to the judiciary.[24]

Footnotes

1 Conn.—Adams v. Rubinow, 157 Conn. 150, 251 A.2d 49 (1968).
Mass.—Opinions of the Justices to the Senate, 372 Mass. 883, 363 N.E.2d 652 (1977).
Tex.—Unauthorized Practice of Law Committee v. American Home Assur. Co., Inc., 261 S.W.3d 24 (Tex. 2008).
Wis.—Mosing v. Hagen, 33 Wis. 2d 636, 148 N.W.2d 93 (1967).

2 Ariz.—Burney v. Lee, 59 Ariz. 360, 129 P.2d 308 (1942).
Pa.—Blair Motor Car Co. v. Mervine, 48 Pa. D. & C. 351, 1943 WL 2940 (C.P. 1943).

3 Minn.—In re Public Hearing on Vacancies in Judicial Positions in Fifth Judicial Dist., 375 N.W.2d 463 (Minn. 1985).

4 Wash.—State v. Wadsworth, 139 Wash. 2d 724, 991 P.2d 80 (2000).

5 Wyo.—White v. Fisher, 689 P.2d 102 (Wyo. 1984).

6 Mo.—Rhodes v. Bell, 230 Mo. 138, 130 S.W. 465 (1910).

Okla.—State ex rel. Jones v. Presson, 1938 OK 120, 182 Okla. 147, 77 P.2d 38 (1938).

Tex.—McIntosh v. State, 56 Tex. Crim. 134, 120 S.W. 455 (1909).

Change of terms

Mo.—Rhodes v. Bell, 230 Mo. 138, 130 S.W. 465 (1910).

Special terms

Tex.—McIntosh v. State, 56 Tex. Crim. 134, 120 S.W. 455 (1909).

7 Ill.—Wintersteen v. National Cooperage & Woodenware Co., 361 Ill. 95, 197 N.E. 578 (1935).

Cost of procuring testimony

Ill.—Wintersteen v. National Cooperage & Woodenware Co., 361 Ill. 95, 197 N.E. 578 (1935).

8 Ill.—People ex rel. Lasecki v. Traeger, 374 Ill. 355, 29 N.E.2d 519 (1940).

9 Neb.—Dinsmore v. State, 61 Neb. 418, 85 N.W. 445 (1901).

10 Ill.—Morton v. Pusey, 237 Ill. 26, 86 N.E. 601 (1908) (disapproved of on other grounds by, United Biscuit Co. of America v. Voss Truck Lines, 407 Ill. 488, 95 N.E.2d 439 (1950)).

11 N.Y.—Leach v. Auwell, 154 A.D. 170, 138 N.Y.S. 975 (2d Dep't 1912).

12 Okla.—Sterling Refining Co. v. Walker, 1933 OK 446, 165 Okla. 45, 25 P.2d 312 (1933).

13 Okla.—School Dist. No. 37, Washita County v. Latimer, 1942 OK 215, 190 Okla. 620, 126 P.2d 280 (1942).

14 Wash.—Francisco v. Board of Directors of Bellevue Public Schools, Dist. No. 405, 85 Wash. 2d 575, 537 P.2d 789 (1975).

Worker's compensation

Kan.—Gawith v. Gage's Plumbing & Heating Co., 206 Kan. 169, 476 P.2d 966 (1970).

N.M.—Livingston v. Loffland Bros. Co., 86 N.M. 375, 1974-NMCA-047, 524 P.2d 991 (Ct. App. 1974).

15 U.S.—U.S. v. Crocker-Anglo Nat. Bank, 263 F. Supp. 125 (N.D. Cal. 1966).

N.D.—Shaw v. Burleigh County, 286 N.W.2d 792 (N.D. 1979).

16 Neb.—Lux v. Mental Health Bd. of Polk County, 202 Neb. 106, 274 N.W.2d 141 (1979).

N.M.—City of Hobbs v. State ex rel. Reynolds, 1970-NMSC-133, 82 N.M. 102, 476 P.2d 500 (1970).

W. Va.—City of Huntington v. State Water Commission, 135 W. Va. 568, 64 S.E.2d 225 (1951).

17 Cal.—Barton v. State Bar of Cal., 209 Cal. 677, 289 P. 818 (1930).

Ky.—Hobson v. Kentucky Trust Co. of Louisville, 303 Ky. 493, 197 S.W.2d 454 (1946) (overruled in part on other grounds by, Frazee v. Citizens Fidelity Bank & Trust Co., 393 S.W.2d 778 (Ky. 1964)).

Tex.—Unauthorized Practice of Law Committee v. American Home Assur. Co., Inc., 261 S.W.3d 24 (Tex. 2008).

18 Idaho—In re Edwards, 45 Idaho 676, 266 P. 665 (1928).

Creation of state bar

Ga.—Sams v. Olah, 225 Ga. 497, 169 S.E.2d 790 (1969).

Grievance panel and reviewing committee proceedings

Conn.—Statewide Grievance Committee v. Presnick, 215 Conn. 162, 575 A.2d 210 (1990).

Public hearings of Judicial Performance Commission

Cal.—Adams v. Commission on Judicial Performance, 8 Cal. 4th 630, 34 Cal. Rptr. 2d 641, 882 P.2d 358 (1994).

Rules of state bar

Cal.—Barton v. State Bar of Cal., 209 Cal. 677, 289 P. 818 (1930).

Wis.—Integration of Bar Case, 244 Wis. 8, 11 N.W.2d 604, 151 A.L.R. 586 (1943).

19 Va.—Campbell v. Third Dist. Committee of Va. State Bar, 179 Va. 244, 18 S.E.2d 883 (1942).

20 Wash.—In re Bruen, 102 Wash. 472, 172 P. 1152 (1918).

21 U.S.—McBryde v. Committee to Review Circuit Council Conduct and Disability Orders of Judicial Conference of U.S., 264 F.3d 52 (D.C. Cir. 2001).

22 Minn.—In re Gillard, 271 N.W.2d 785 (Minn. 1978).

23 Mass.—Matter of Dugan, 418 Mass. 185, 635 N.E.2d 246 (1994).

24 Colo.—People v. Moseley, 193 Colo. 256, 566 P.2d 331 (1977).

Ind.—Clemons v. State, 162 Ind. App. 50, 317 N.E.2d 859 (1974).

Kan.—State v. Green, 218 Kan. 438, 544 P.2d 356 (1975).

Waiver by court rule permissible

Supreme court could by court rule constitutionally ensure procedural due process in the handling of juvenile waiver proceedings.

Mich.—People v. Peters, 397 Mich. 360, 244 N.W.2d 898 (1976).

End of Document

16 C.J.S. Constitutional Law § 358

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

§ 358. Creation, alteration, and dissolution of governmental subdivisions

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2403

The legislature may not delegate to the judiciary the power to create, classify, or dissolve municipal corporations and other similar governmental agencies; but the legislature may delegate the performance of certain functions of a ministerial or judicial nature, such as the determination whether there has been a compliance with the statute governing the creation and dissolution of such public bodies.

The exercise of the power to create[1] or dissolve[2] municipal corporations is a legislative function which may not be delegated to the courts, but the legislature may delegate to the courts the performance of certain functions of a judicial or ministerial character, in connection with the creation of municipal corporations,[3] and the consolidation[4] or dissolution[5] of existing municipalities.

Thus, the courts may be authorized to determine the existence of certain facts necessary to the creation or dissolution of the corporation[6] and in general to determine whether the statute governing the creation of such corporations has been complied

with.[7] The power of assigning or transferring municipal corporations to different classes is legislative and may not be delegated to the courts.[8]

School districts.

Laying out school districts is a legislative function which may not be delegated to the courts;[9] but the legislature may delegate to the courts powers with reference to the creation of such districts which are merely administrative or quasi-judicial in their nature.[10]

Drainage, sanitary, conservancy, and flood control districts.

Although there is authority upholding statutes which confer on the courts the power to determine whether the establishment of a district will be for the advantage of the owners of real property therein, or will be in the interests of the public health, convenience, or welfare,[11] as a general rule, the legislature may not delegate to the courts the power to determine whether a drainage district may be created[12] or confer on the courts any legislative powers with reference to the creation of such a district.[13] However, the legislature may delegate to the courts the performance of certain functions in connection with the establishment of drainage, conservancy, or flood control districts which are of a judicial or ministerial nature.[14] Thus, statutes have been upheld which confer on the courts the power to determine, as a question of fact, whether a drainage district has been created in accordance with the provisions of the law,[15] and, in fact, the courts may be given the authority to establish districts when the conditions stated in the statute are found to exist.[16] Moreover, a statute authorizing the appointment of judicial receivers for drainage districts after default in the payment of a district's obligations has been ruled not void as a delegation of legislative powers to the courts.[17]

Fire districts.

The legislature may delegate to the courts the power to determine the existence of facts authorizing the creation of a fire district under general rules prescribed by statute.[18]

Hospital districts.

The legislature may delegate to the courts the power to determine whether facts exist authorizing the creation of a hospital district.[19]

Irrigation districts.

The duties of determining the propriety of establishing irrigation districts and of prescribing the mode for the organization of such districts are legislative;[20] but it is for the courts to determine whether a necessity exists for the creation of a particular district,[21] whether the conditions precedent prescribed by statute have been complied with,[22] and the amount of labor to be performed by each person.[23]

Taxing districts.

The procedure for the formation of a taxing district may be had in a judicial tribunal.[24]

Light, heat, and power districts.

The determination as to whether public policy, convenience, and welfare require the organization of electric light, heat, and power districts is for the legislature and may not be delegated to the courts.[25] However, the legislature, having declared its policy and determined the conditions which must form the basis for the organization of such districts, may delegate to the courts authority to determine whether the law has been complied with.[26]

Water supply district.

The legislature may properly have the judiciary determine whether facts exist to warrant the creation of a water supply district.[27]

Footnotes

1 Ill.—Town of Godfrey v. City of Alton, 33 Ill. App. 3d 978, 338 N.E.2d 890 (5th Dist. 1975).
N.D.—City of Carrington v. Foster County, 166 N.W.2d 377 (N.D. 1969).
Wis.—Westring v. James, 71 Wis. 2d 462, 238 N.W.2d 695 (1976).

2 Ariz—Udall v. Severn, 52 Ariz. 65, 79 P.2d 347 (1938).
Ky.—Boone County v. Town of Verona, 190 Ky. 430, 227 S.W. 804 (1921).

3 Iowa—State ex rel. Klise v. Town of Riverdale, 244 Iowa 423, 57 N.W.2d 63 (1953).
Ky.—Boone County v. Town of Verona, 190 Ky. 430, 227 S.W. 804 (1921).
Miss.—Rouse v. City of Pascagoula, 230 So. 2d 543 (Miss. 1970).

4 Minn.—In re School Dists. Nos. 2, 3, and 4 of Nobles County, 122 Minn. 383, 142 N.W. 723 (1913).
N.J.—State v. City of Wildwood, Cape May County, 83 N.J.L. 188, 84 A. 274 (N.J. Sup. Ct. 1912).

5 Ky.—Boone County v. Town of Verona, 190 Ky. 430, 227 S.W. 804 (1921).

6 Kan.—Petition of City of Salina, 169 Kan. 579, 220 P.2d 147 (1950).
Ky.—Boone County v. Town of Verona, 190 Ky. 430, 227 S.W. 804 (1921).
Mo.—State ex rel. Fire Dist. of Lemay v. Smith, 353 Mo. 807, 184 S.W.2d 593 (1945).
Commingling ministerial and discretionary powers
Commingling of powers in a chancellor to determine the question of public convenience and necessity for the creation of a new municipal corporation as well as that of reasonableness, one being ministerial, the other discretionary, does not violate the prohibition against unlawful delegation of governmental powers.
Miss.—Rouse v. City of Pascagoula, 230 So. 2d 543 (Miss. 1970).
Preliminary requirements of incorporation
Legislature may delegate to the courts power to ascertain whether the necessary preliminary requirements to a certificate of incorporation have been met and may vest the courts with administrative discretion as to whether the certificate of incorporation should issue.
W. Va.—Wiseman v. Calvert, 134 W. Va. 303, 59 S.E.2d 445 (1950).

7 Nev.—State v. Second Judicial Dist. Court in and for Churchill County, 30 Nev. 225, 94 P. 70 (1908).

8 Ky.—Gilbert v. City of Paducah, 115 Ky. 160, 24 Ky. L. Rptr. 1998, 72 S.W. 816 (1903).

9 Ill.—North v. Board of Education of Community High School Dist. No. 203, 313 Ill. 422, 145 N.E. 158 (1924).

10 S.D.—In re Common School Dist. in Highmore Independent School Dist., of Highmore, Hyde County, 54 S.D. 146, 222 N.W. 690 (1928).

11 Fla.—Certain Lands in Putnam County v. East Palatka Drainage Dist., 111 Fla. 795, 149 So. 766 (1933).
Kan.—In re Verdigris Conservancy Dist., 131 Kan. 214, 289 P. 966 (1930).

12 Ill.—Funkhouser v. Randolph, 287 Ill. 94, 122 N.E. 144 (1919).
Kan.—In re Verdigris Conservancy Dist., 131 Kan. 214, 289 P. 966 (1930).
Sewerage district as best solution to pollution problems
Wis.—In re Fond du Lac Metropolitan Sewerage Dist., 42 Wis. 2d 323, 166 N.W.2d 225 (1969).

13 Kan.—State v. Drainage Dist. No. 1 of Lyon County, 123 Kan. 191, 254 P. 372 (1927).
Mont.—In re Valley Center Drain Dist., Big Horn County, 64 Mont. 545, 211 P. 218 (1922).

Public health, convenience, and welfare

The questions whether a proposed drain will be conducive to public health, convenience, or welfare, and whether the route thereof is practicable, are questions of governmental or administrative policy, the determination of which cannot be conferred by statute on courts.

Neb.—Tyson v. Washington County, 78 Neb. 211, 110 N.W. 634 (1907).
W. Va.—Hodges v. Public Service Com'n, 110 W. Va. 649, 159 S.E. 834 (1931).

14 Ill.—People ex rel. Village of South Chicago Heights v. Bergin, 340 Ill. 20, 172 N.E. 60 (1930).
Neb.—Mooney v. Drainage Dist. No. 1 of Richardson County, 126 Neb. 219, 252 N.W. 910 (1934).
Okla.—Owens v. Tri-County Turkey Creek Conservancy Dist. No. 21, 1966 OK 173, 418 P.2d 674 (Okla. 1966).

15 U.S.—Duval Cattle Co. v. Hemphill, 41 F.2d 433 (C.C.A. 5th Cir. 1930).
Fla.—Certain Lands in Putnam County v. East Palatka Drainage Dist., 111 Fla. 795, 149 So. 766 (1933).
S.C.—Dillon Catfish Drainage Dist. v. Bank of Dillon, 143 S.C. 178, 141 S.E. 274 (1928).

16 U.S.—Silvey v. Commissioners of Montgomery County, Ohio, 273 F. 202 (S.D. Ohio 1921).
Ohio—Miami County v. City of Dayton, 92 Ohio St. 215, 110 N.E. 726 (1915).
Wis.—Madison Metropolitan Sewerage Dist. v. Department of Natural Resources, 66 Wis. 2d 634, 226 N.W.2d 184 (1975).

17 Fla.—Little River Valley Drainage Dist. v. First State Sav. Bank of Morenci, Mich., 123 Fla. 581, 167 So. 376 (1936).

18 Ill.—People ex rel. Armstrong v. Huggins, 407 Ill. 157, 94 N.E.2d 863 (1950).
Mo.—State ex rel. Normandy Fire Protection Dist. v. Smith, 358 Mo. 572, 216 S.W.2d 440 (1948).

19 Ill.—People ex rel. Royal v. Cain, 410 Ill. 39, 101 N.E.2d 74 (1951).

20 Iowa—Denny v. Des Moines County, 143 Iowa 466, 121 N.W. 1066 (1909).
Mont.—O'Neill v. Yellowstone Irr. Dist., 44 Mont. 492, 121 P. 283 (1912).

21 Mont.—O'Neill v. Yellowstone Irr. Dist., 44 Mont. 492, 121 P. 283 (1912).

22 Mont.—O'Neill v. Yellowstone Irr. Dist., 44 Mont. 492, 121 P. 283 (1912).
N.M.—In re Dexter-Greenfield Drainage Dist., 1915-NMSC-097, 21 N.M. 286, 154 P. 382 (1915).

23 Kan.—Shreves v. Gibson, 76 Kan. 709, 92 P. 584 (1907).

24 Fla.—Burnett v. Greene, 105 Fla. 35, 144 So. 205 (1931).

25 Neb.—Searle v. Yensen, 118 Neb. 835, 226 N.W. 464, 69 A.L.R. 257 (1929).

26 Neb.—Searle v. Yensen, 118 Neb. 835, 226 N.W. 464, 69 A.L.R. 257 (1929).

27 Miss.—Culley v. Pearl River Indus. Commission, 234 Miss. 788, 108 So. 2d 390 (1959).

End of Document

16 C.J.S. Constitutional Law § 359

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

B. Legislative Powers and Delegation Thereof

4. Delegation of Powers

d. Delegation to Judiciary

§ 359. Creation, alteration, and dissolution of governmental subdivisions—Inclusion, addition, or detachment of territory

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2403

The legislature may not delegate to the courts the power to determine the conditions on which certain territory will be included within, added to, or detached from, a municipal corporation, but where the legislature has prescribed the conditions on which territory may be originally included in, or subsequently added to or detached from, a municipality, it may authorize the courts to determine the question of fact whether these conditions exist in a particular case and whether the law has been complied with.

While the legislature may not delegate to a court the power to exercise its discretion as to what the law is with reference to annexation or detachment of territory, it may authorize the court to determine what will be done with reference to the execution of the law.[1] Thus, the legislature may not delegate to the courts the power to determine the conditions on which certain territory will be included within, added to, or detached from, a municipal corporation,[2] but where the legislature has prescribed the conditions on which territory may be originally included in,[3] or subsequently added to,[4] or detached from,[5] a municipality, it

may authorize the courts to determine the question of fact whether or not these conditions exist in a particular case and whether the law has been complied with.

A statute authorizing an appeal to the courts from the decision of a city council refusing to detach territory has been variously declared constitutional[6] and unconstitutional.[7]

Counties.

An act providing that part of one county will be annexed to another county, but that the act will not be effective if the court sets aside the election provided for as irregular, or hold that the legislature was wrong in the meaning it assigned to the word "area," is not improper as a delegation of legislative power to the court.[8]

School districts.

The alteration of the boundaries of established school districts is a legislative function which cannot be delegated to the courts.[9] However, the legislature may give a court jurisdiction to hear petitions for changes in the boundaries of school districts,[10] and a statute providing for review by a court of the order of a county superintendent for annexation of territory of one school district to another district is not invalid as a grant of legislative power to the courts.[11]

Drainage districts.

The legislature may delegate to the courts the power to determine what property will be embraced in a drainage district.[12] So the legislature, in extending a drainage district, may delegate to the courts a limited function in connection therewith.[13] On the other hand, it has been determined that a statute authorizing a court to determine what should be the boundaries of a district, or what lands should be organized into a district, is unconstitutional as conferring on the court legislative powers.[14]

Fire districts.

The legislature may authorize the courts to fix the boundaries of fire districts in accordance with standards set up by statute.[15]

Light, heat, and power districts.

The determination as to what lands will be included in a proposed electric light, heat, and power district is not delegable to the courts,[16] nor may the power to change the boundaries be so delegated.[17]

Judicial districts.

A statute establishing judicial committees to propose changes in judicial districting plans does not vest such committees with legislative powers but, rather, only permits such committees to act in an advisory capacity through a legislative body.[18]

Magisterial districts.

A statute governing the reapportionment of magisterial districts, which delegates to a court the functions of passing upon proposed redistricting and establishing new boundaries in the event the proposal is disapproved, is void in that the establishment

of boundaries for magisterial districts falls within the area of legislative discretion and cannot be delegated to a judicial officer or body.[19]

Footnotes

1 Ill.—Punke v. Village of Elliott, 364 Ill. 604, 5 N.E.2d 389 (1936).
Ind.—Town of St. John v. Gerlach, 197 Ind. 289, 150 N.E. 771 (1926).
No judicial discretion
(1) Statutes providing for judicial proceedings for annexation of a territory to a municipality are constitutional only where they leave to courts a determination of questions of fact as distinguished from the exercise of general discretion involving public interest.
Iowa—State ex rel. Klise v. Town of Riverdale, 244 Iowa 423, 57 N.W.2d 63 (1953).
(2) A court has no discretionary power to determine whether a proposal is good or bad, wise or unwise.
Iowa—City of Clinton v. Owners of Property Situated Within Certain Described Boundaries, 191 N.W.2d 671 (Iowa 1971).

2 Ga.—Jamison v. City of Atlanta, 225 Ga. 51, 165 S.E.2d 647 (1969).
N.D.—City of Carrington v. Foster County, 166 N.W.2d 377 (N.D. 1969).
Wis.—Town of Beloit v. City of Beloit, 37 Wis. 2d 637, 155 N.W.2d 633 (1968).
Advisability and expediency
Advisability and political or economic expediency of annexing territory to a municipality is purely legislative and cannot be delegated to judiciary.
Ariz.—Udall v. Severn, 52 Ariz. 65, 79 P.2d 347 (1938).
Kan.—In re Ruland, 120 Kan. 42, 242 P. 456 (1926).
Public convenience and necessity
Question of public convenience and necessity of enlargement of a municipality is a legislative question for a municipal board in adopting an extension ordinance and cannot be passed upon by a chancellor.
Miss.—Ritchie v. City of Brookhaven, 217 Miss. 860, 65 So. 2d 436 (1953), error overruled, 217 Miss. 860, 65 So. 2d 832 (1953).

3 Mich.—Hempel ex rel. Michigan Limestone & Chemical Co. v. Rogers Tp., 313 Mich. 1, 20 N.W.2d 787 (1945).

4 Ind.—Noble v. City of Warsaw, 156 Ind. App. 618, 297 N.E.2d 916 (1973).
Iowa—City of Clinton v. Owners of Property Situated Within Certain Described Boundaries, 191 N.W.2d 671 (Iowa 1971).
Mo.—Young v. Mayor, Council and Citizens of City of Liberty, 531 S.W.2d 732 (Mo. 1976).

5 Colo.—City of Littleton v. Wagenblast, 139 Colo. 346, 338 P.2d 1025 (1959).
Idaho—Lyon v. City of Payette, 38 Idaho 705, 224 P. 793 (1924).
Utah—Plutus Mining Co. v. Orme, 76 Utah 286, 289 P. 132 (1930).

6 Ind.—Livengood v. City of Covington, 194 Ind. 633, 144 N.E. 416 (1924).
S.D.—Wickhem v. City of Alexandria, 23 S.D. 556, 122 N.W. 597 (1909).

7 Neb.—Winkler v. City of Hastings, 85 Neb. 212, 122 N.W. 858 (1909).
De novo review
Statute authorizing cities to annex territory by ordinance and providing that the owner of annexed territory may appeal from the ordinance to the court where the case would be tried as one in equity de novo was an unauthorized delegation of legislative power to the court.
Neb.—Williams v. Buffalo County, 181 Neb. 233, 147 N.W.2d 776 (1967).

8 S.C.—Beaufort County v. Jasper County, 220 S.C. 469, 68 S.E.2d 421 (1951).

9 Ill.—North v. Board of Education of Community High School Dist. No. 203, 313 Ill. 422, 145 N.E. 158 (1924).

10 Ill.—Board of Ed. of Waverly Community Unit School Dist. No. 6 v. Nickell, 410 Ill. 98, 101 N.E.2d 438 (1951).

11 Okla.—School Dist. No. 37, Washita County v. Latimer, 1942 OK 215, 190 Okla. 620, 126 P.2d 280 (1942).

12 Mo.—Gossett-Warner Drainage Dist. of Holt County v. Griswold, 225 Mo. App. 1040, 16 S.W.2d 691 (1929).

13 Mo.—Honey Creek Drainage Dist. v. Farm City Inv. Co., 326 Mo. 739, 32 S.W.2d 753 (1930).

14 Ill.—Funkhouser v. Randolph, 287 Ill. 94, 122 N.E. 144 (1919).

15 Ill.—People ex rel. Armstrong v. Huggins, 407 Ill. 157, 94 N.E.2d 863 (1950).

16 Neb.—Searle v. Yensen, 118 Neb. 835, 226 N.W. 464, 69 A.L.R. 257 (1929).

17 Neb.—Searle v. Yensen, 118 Neb. 835, 226 N.W. 464, 69 A.L.R. 257 (1929).

18 Wash.—Long v. Odell, 60 Wash. 2d 151, 372 P.2d 548 (1962).

19 Ky.—Fawbush v. Bond, 613 S.W.2d 414 (Ky. 1981).

End of Document

16 C.J.S. Constitutional Law § 360

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

§ 360. Appointment, removal, and compensation of public officers and their deputies

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2403

Subject to some exceptions, the legislature may delegate to the courts authority to appoint or remove public officers and their deputies. There is a conflict of opinion as to the validity of statutes delegating to courts the power to fix the compensation of officers.

The legislature may generally delegate to the courts power to appoint public officers, where the power of appointment is not vested by the constitution in any particular department of the government,[1] if such appointment is incidental to the exercise of judicial functions.[2] Thus, the legislature may delegate to the courts the power to appoint magistrates,[3] to create a probation department for the county and appoint persons to positions therein,[4] and to establish boards of arbitration.[5]

The legislature may delegate to the courts authority to appoint deputies of county officers, where the constitution authorizes the legislature to vest such powers in the courts, with regard to private and local affairs, as may be expedient.[6] Also, it has been ruled that a statute authorizing the attorney general's appointment of a special attorney to take the place of the district attorney,

on request of the president judge, is not unconstitutional as delegating the legislative right of appointment to such judge,[7] nor is a statute authorizing a judge to appoint a special prosecutor unconstitutional where the court finds the prosecuting attorney unable to act or where it would be improper for him or her to act.[8]

A statute authorizing a county court to appoint a county officer whose duties would include those of the probation officer is not a delegation of legislative power to abolish the office of probation officer,[9] but the legislature is without power to delegate to a court authority to fix the term of an officer whose appointment is vested by the constitution in the executive.[10] A statute providing for a court to review appointments with respect to a denial of veterans' preference is not an improper delegation of legislative authority as applied to appointment of city police court judge.[11]

Removal of public officer.

A statute may authorize a court to remove a public officer for malfeasance, misconduct, maladministration, and malversation in office without unconstitutionally delegating legislative power.[12]

Fixing compensation.

Statutes authorizing courts to fix the compensation of certain officers have in some cases been ruled valid,[13] subject to the requirement that sufficient standards be provided.[14] These include a statute authorizing a court to fix the compensation of its court reporter,[15] a sheriff,[16] probation personnel,[17] or deputies employed by county officers.[18] In other cases, statutes delegating to courts the power to fix the compensation of particular officers have been ruled unconstitutional as attempts to delegate legislative power,[19] especially where the constitution requires such compensation to be fixed by the legislature.[20]

CUMULATIVE SUPPLEMENT

Cases:

Appropriate remedy, upon Supreme Court's determination that appointment of administrative law judge (ALJ) of Securities and Exchange Commission (SEC), who presided over enforcement proceeding against investment company and its owner, did not comply with Appointments Clause, which governed appointment of Officers of the United States, was to require a new hearing before the SEC or a constitutionally appointed ALJ other than the ALJ who had presided over the enforcement proceeding, even if the presiding ALJ had received in the interim, or would receive in the future, a constitutional appointment, where the Commission and its constitutionally appointed ALJs would be available as substitute decisionmakers to hear the proceeding on remand. U.S.C.A. Const. Art. 2, § 2, cl. 2; 15 U.S.C.A. § 78d–1(a); 17 C.F.R. § 201.110. Lucia v. S.E.C., 138 S. Ct. 2044 (2018).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Hobson v. Hansen, 265 F. Supp. 902 (D. D.C. 1967); U.S. v. Solomon, 216 F. Supp. 835 (S.D. N.Y. 1963).
N.J.—Application of Schragger, 58 N.J. 274, 277 A.2d 212 (1971).
Tenn.—Chattanooga-Hamilton County Hospital Authority v. City of Chattanooga, 580 S.W.2d 322 (Tenn. 1979).

Appointment regarded as executive function

Legislature cannot place the power of appointment of a public employee in the judiciary, and although under an enforcement statute and the constitution the district court may order an agency to grant to a veteran an absolute preference, the judiciary lacks any power beyond such statutory relief to appoint a particular petitioner to a job.

Mont.—Jensen v. State, Dept. of Labor and Industry, 213 Mont. 84, 689 P.2d 1231 (1984).

2 La.—McGee v. Lee, 328 So. 2d 159 (La. 1976).

Mass.—Opinion of the Justices, 365 Mass. 639, 309 N.E.2d 476 (1974).

N.Y.—Handler v. Berry, 138 Misc. 584, 247 N.Y.S. 46 (Sup 1931).

Masters for criminal proceedings

A statute that delegated to the district court the authority to appoint masters for criminal proceedings to perform certain subordinate or administrative duties that the Nevada Supreme Court had approved to be assigned to such a master did not violate the separation of powers provision of the Nevada Constitution although the legislature left the implementation details to the courts; the enactment limited a district court master's powers to a specified subset of responsibilities, the legislature articulated the scope of the delegated powers with sufficient definition, and the delegated powers fell within the judicial function.

Nev.—State v. Frederick, 299 P.3d 372, 129 Nev. Adv. Op. No. 27 (Nev. 2013).

Individual judges as legislative agents

The legislature may properly delegate to individual judges, acting as agents of the legislature, the power to appoint condemnation commissioners.

N.J.—Bergen County Sewer Authority v. Borough of Little Ferry, 5 N.J. 548, 76 A.2d 680 (1950).

3 Ga.—State v. Andrews, 240 Ga. 531, 242 S.E.2d 153 (1978).

Ind.—Petition for Appointment of Magistrates for City of Beech Grove, 216 Ind. 417, 24 N.E.2d 773 (1940).

Tex.—Kelley v. State, 676 S.W.2d 104 (Tex. Crim. App. 1984).

Substitution of full-time for part-time magistrates

Iowa—Warren County v. Judges of Fifth Judicial Dist., 243 N.W.2d 894 (Iowa 1976).

4 Ohio—State ex rel. Gordon v. Zangerle, 136 Ohio St. 371, 16 Ohio Op. 536, 26 N.E.2d 190 (1940).

Tex.—Commissioners Court of Lubbock County v. Martin, 471 S.W.2d 100 (Tex. Civ. App. Amarillo 1971), writ refused n.r.e., (Mar. 15, 1972).

5 Pa.—Application of Smith, 381 Pa. 223, 112 A.2d 625, 55 A.L.R.2d 420 (1955).

6 Tenn.—State v. Knox County, 165 Tenn. 319, 54 S.W.2d 973 (1932).

7 Pa.—Com. ex rel. Attorney General, to Use of Weber v. Irvin, 110 Pa. Super. 387, 168 A. 868 (1933) (overruled in part on other grounds by, Pipa v. Kemberling, 126 Pa. Super. 289, 191 A. 373 (1936)).

8 W. Va.—State ex rel. Goodwin v. Cook, 162 W. Va. 161, 248 S.E.2d 602 (1978).

9 Mo.—Poindexter v. Pettis County, 295 Mo. 629, 246 S.W. 38 (1922).

10 Okla.—In re County Com'rs of Counties Comprising Seventh Judicial Dist., 1908 OK 207, 22 Okla. 435, 98 P. 557 (1908).

11 Iowa—Maddy v. City Council of City of Ottumwa, 226 Iowa 941, 285 N.W. 208 (1939).

12 N.Y.—Application of Baker, 87 Misc. 2d 592, 386 N.Y.S.2d 313 (Sup 1976).

13 Cal.—Millholen v. Riley, 211 Cal. 29, 293 P. 69 (1930).

N.J.—Application of Schragger, 58 N.J. 274, 277 A.2d 212 (1971).

Ohio—State ex rel. Gordon v. Zangerle, 136 Ohio St. 371, 16 Ohio Op. 536, 26 N.E.2d 190 (1940).

Agent of legislature

The judicial branch of government may be designated by the legislature, in proper cases, as an agent for the fixing of certain salaries.

Ariz.—Powers v. Isley, 66 Ariz. 94, 183 P.2d 880 (1947).

N.J.—In re Salaries for Probation Officers of Bergen County, 58 N.J. 422, 278 A.2d 417 (1971).

Ministerial or judicial duty

The legislature may delegate to the court the ministerial or judicial duty of determining the amount of compensation that would justly remunerate an official for service rendered.

Tenn.—Carothers v. Giles County, 162 Tenn. 492, 39 S.W.2d 584 (1931).

Review

Statutes providing that in appeals from decisions by a county board determining the salary of county officers, the action of the county board is to be reviewed in a like manner as though reviewed by certiorari are in accord with the constitutional mandate of separation of powers.

Minn.—Amdahl v. Fillmore County, 258 N.W.2d 869 (Minn. 1977).

14 Tex.—In re Johnson, 554 S.W.2d 775 (Tex. Civ. App. Corpus Christi 1977), writ refused n.r.e., 569 S.W.2d 882 (Tex. 1978).

15 Ariz.—Powers v. Isley, 66 Ariz. 94, 183 P.2d 880 (1947).

16 Minn.—Cahill v. Beltrami County, 224 Minn. 564, 29 N.W.2d 444 (1947).

17 Tex.—Commissioners Court of Lubbock County v. Martin, 471 S.W.2d 100 (Tex. Civ. App. Amarillo 1971), writ refused n.r.e., (Mar. 15, 1972).

18 Tenn.—Hunter v. Conner, 152 Tenn. 258, 277 S.W. 71 (1925).

19 Ark.—Venhaus v. State ex rel. Lofton, 285 Ark. 23, 684 S.W.2d 252 (1985).

Ky.—Vaughn v. Knopf, 895 S.W.2d 566 (Ky. 1995).

W. Va.—State ex rel. Richardson v. County Court of Kanawha County, 138 W. Va. 885, 78 S.E.2d 569 (1953).

20 Ohio—Andrews v. State ex rel. Henry, 104 Ohio St. 384, 135 N.E. 655 (1922).

End of Document

16 C.J.S. Constitutional Law § 361

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

B. Legislative Powers and Delegation Thereof

4. Delegation of Powers

d. Delegation to Judiciary

§ 361. Licenses and permits

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2403

The courts may be authorized to perform judicial or ministerial functions in the matter of licenses and permits.

The courts may be authorized to issue licenses or permits,[1] to oversee summary proceedings for suspension of licenses[2] or suspend a license for cause,[3] to hear an appeal by an applicant to whom a license has been refused[4] or by a licensee whose license has been suspended or revoked,[5] and to pass on the reasonableness of license fees imposed by a municipal corporation on public service companies.[6] On the other hand, legislative functions with respect to licenses may not be delegated to the courts,[7] and it has been said that, generally, licensing cannot be, but revocation or suspension of licenses can be, entrusted to a court created exclusively under Article III of the Federal Constitution.[8]

Footnotes

1 Ga.—Carroll v. Wright, 131 Ga. 728, 63 S.E. 260 (1908).
Ill.—People v. Inghram, 118 Ill. 2d 140, 113 Ill. Dec. 65, 514 N.E.2d 977 (1987).

2 Ill.—People v. Hamilton, 118 Ill. 2d 153, 113 Ill. Dec. 53, 514 N.E.2d 965 (1987).

3 N.H.—State v. Gatchell, 150 N.H. 642, 843 A.2d 332 (2004).
N.J.—State v. Moran, 202 N.J. 311, 997 A.2d 210 (2010).
N.Y.—Pringle v. Wolfe, 88 N.Y.2d 426, 646 N.Y.S.2d 82, 668 N.E.2d 1376 (1996).

4 Conn.—Appeal of Moynihan, 75 Conn. 358, 53 A. 903 (1903).

5 N.C.—In re Wright, 228 N.C. 584, 46 S.E.2d 696 (1948).

6 Idaho—Idaho Gold Dredging Co. v. Balderston, 58 Idaho 692, 78 P.2d 105 (1938).
Pa.—Pittsburgh & Allegheny Tel. Co. v. Braddock Borough, 43 Pa. Super. 456, 1910 WL 4111 (1910).

7 W. Va.—Application of Dailey, 195 W. Va. 330, 465 S.E.2d 601 (1995).
Legislative standard
Granting or withholding licenses for the operation of vending machines under a standard which requires that the applicant conduct his or her business consistent with the general welfare, health, peace, and safety of people is a legislative function which may not be delegated to judiciary.
Tex.—Texas Vending Commission v. Headquarters Corp., 505 S.W.2d 402 (Tex. Civ. App. Austin 1974), writ refused n.r.e., (June 19, 1974).
Liquor license
Statute authorizing the court to approve a license for the sale of alcoholic beverages if the court is of opinion that the applicant is a fit person or place imposes duties on judges which are quasi-legislative and nonjudicial, and therefore, the statute is unconstitutional.
Md.—Cromwell v. Jackson, 188 Md. 8, 52 A.2d 79 (1947).

8 U.S.—Porter v. Lajeunesse, 68 F. Supp. 243 (D. Mass. 1946).

End of Document

16 C.J.S. Constitutional Law § 362

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

B. Legislative Powers and Delegation Thereof

4. Delegation of Powers

d. Delegation to Judiciary

§ 362. Taxes and special assessments

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2403

As a general rule, the legislature may not confer on the courts the power to levy and assess taxes although the power to review tax proceedings and to determine necessary facts in connection with taxes and special assessments may be so conferred.

As a general rule, the power to levy and assess taxes is a legislative function which cannot be delegated to the judiciary[1] unless the constitution provides otherwise.[2] However, a statute providing for an appeal to a court from the decision of a board or officer in assessment proceedings has been determined not void as attempting to impose nonjudicial functions on a court[3] although there is authority to the contrary.[4]

Authority to levy and collect taxes may be conferred on tribunals that are both judicial and administrative in character.[5] A statute authorizing a town board of auditors to consent to a levy of a road and bridge tax is not unconstitutional because of the presence on the board of a justice of the peace who is a statutory member thereof,[6] and a statute granting to a property owner

the defense of overvaluation in a real estate tax assessment, thereby invoking the aid of the judiciary in the final completion of the proceedings has been sustained.[7] The legislature may confer on a court the power to ascertain certain facts necessary to be found in order to compute the amount of a tax[8] and to determine whether taxes have been levied in accordance with the method provided by law.[9]

Special assessments.

The legislature may delegate to the courts authority to determine benefits as the basis for special assessments,[10] or to appoint commissioners to make assessments for public improvements and to review such assessments[11] and ascertain whether the assessing officers have correctly determined the facts on which the assessment is made,[12] or to prescribe the notice to be given landowners in a drainage district of assessments for benefits.[13] Also, the legislature may delegate to judicial officers, and to courts themselves as agents of the taxing authority, the power to levy assessments for condemnation benefits.[14]

Footnotes

1 Ark.—Robert D. Holloway, Inc. v. Pine Ridge Addition Residential Property Owners, 332 Ark. 450, 966 S.W.2d 241 (1998).
Cal.—Abbott Laboratories v. Franchise Tax Bd., 175 Cal. App. 4th 1346, 96 Cal. Rptr. 3d 864 (2d Dist. 2009), as modified, (Aug. 6, 2009).
Idaho—Idaho Schools For Equal Educational Opportunity v. State, 140 Idaho 586, 97 P.3d 453, 191 Ed. Law Rep. 876 (2004).
N.Y.—In re Mollenhauer's Will, 257 A.D. 286, 13 N.Y.S.2d 619 (2d Dep't 1939).
"Poison pill" provision
Tax authorization statute's "poison pill" provision, repealing the entire statute if a court declared an amendment void, was not an impermissible delegation of legislative power to the judiciary.
N.Y.—City of New York v. State, 94 N.Y.2d 577, 709 N.Y.S.2d 122, 730 N.E.2d 920 (2000).

2 Ill.—In re Barker's Estate, 63 Ill. 2d 113, 345 N.E.2d 484 (1976).

3 U.S.—City Bank Farmers' Trust Co. v. Schnader, 291 U.S. 24, 54 S. Ct. 259, 78 L. Ed. 628 (1934).
Colo.—Walgreen Co. v. Charnes, 819 P.2d 1039 (Colo. 1991).
Okla.—Hopper v. Oklahoma County, 1914 OK 404, 43 Okla. 288, 143 P. 4 (1914).
Assessment of omitted property
Okla.—Chickasha Cotton Oil Co. v. Grady County, 1936 OK 318, 177 Okla. 240, 58 P.2d 590 (1936).
Quasi-judicial matter
Although taxation is basically a legislative function, the fixing of the value of property for taxation may be delegated to courts, by way of appeal, at least as a quasi-judicial matter.
Minn.—Kalscheuer v. State, 214 Minn. 441, 8 N.W.2d 624 (1943).
"Reasonableness" standard
Pa.—Wm. Penn Parking Garage, Inc. v. City of Pittsburgh, 11 Pa. Commw. 507, 314 A.2d 322 (1974), order aff'd, 464 Pa. 168, 346 A.2d 269 (1975).

4 Kan.—Silven v. Board of Com'rs of Osage County, 76 Kan. 687, 92 P. 604 (1907).

5 Ga.—Carroll v. Wright, 131 Ga. 728, 63 S.E. 260 (1908).

6 Ill.—People ex rel. Witte v. Franklin, 352 Ill. 528, 186 N.E. 137 (1933).

7 Minn.—In re Koochiching County Taxes, 146 Minn. 87, 177 N.W. 940 (1920).

8 Wis.—Nunnemacher v. State, 129 Wis. 190, 108 N.W. 627 (1906).

9 Iowa—In re Sioux City Stockyards Co., 149 Iowa 5, 127 N.W. 1102 (1910) (overruled in part on other grounds by, Wilcoxen v. Munn, 206 Iowa 1194, 221 N.W. 823 (1928)).

10 Kan.—Shreves v. Gibson, 76 Kan. 709, 92 P. 584 (1907).
Mass.—City of Boston v. City of Chelsea, 212 Mass. 127, 98 N.E. 620 (1912).

11 Ky.—Henry Bickel Co. v. City of Louisville, 282 Ky. 38, 137 S.W.2d 717, 127 A.L.R. 1084 (1940).
Wash.—City of Seattle v. Seattle & M.R. Co., 50 Wash. 132, 96 P. 958 (1908).

12 Iowa—Reconstruction Finance Corp. v. Deihl, 229 Iowa 1276, 296 N.W. 385 (1941).
Statute valid as providing standard and rules
Kan.—Mizer v. Kansas Bostwick Irr. Dist. No. 2, 172 Kan. 157, 239 P.2d 370 (1951).

13 Or.—Drainage District No. 7 of Washington County v. Bernards, 89 Or. 531, 174 P. 1167 (1918).

14 Mo.—Schwab v. City of St. Louis, 310 Mo. 116, 274 S.W. 1058 (1925).

End of Document

16 C.J.S. Constitutional Law § 363

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

B. Legislative Powers and Delegation Thereof

4. Delegation of Powers

d. Delegation to Judiciary

§ 363. Elections and related matters

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2403

The legislature may delegate to the courts the power to determine facts or perform ministerial duties in connection with elections, but constitutionally prescribed duties of the legislature to decide whether certain questions will be submitted to the people, or to determine the qualifications of legislators or other officers, may not be so delegated.

A statute conferring on the judiciary authority to decide whether certain questions will be submitted to the people is void as an unconstitutional delegation of legislative power.[1] The legislature may, however, delegate to the courts the power to determine whether circumstances exist requiring an election,[2] and a statute which establishes a court's jurisdiction to hear, try, and determine election contests and which sets forth the procedure for such a judicial inquiry does not authorize the court to exercise a power not belonging to the judicial branch of the government.[3] The legislature may also confer on the courts the ministerial duties of declaring the result of a local option election and issuing an order prohibiting the sale of intoxicants.[4]

The legislature may not delegate to the courts the power given by the constitution to the legislature to determine the eligibility of all state elective officers[5] or to judge the qualifications and elections of its own members.[6]

A statute empowering a judge to order a judicial inquiry into whether a candidate for public office violated a corrupt practices act, if in the judge's opinion public justice demands such inquiry, and to certify his or her determination to the governor, was an invalid delegation of legislative power.[7]

While a statute permitting a court in an election contest to determine whether it is "unjust" that the candidate should forfeit his or her office would be invalid if construed as authorizing the court to determine for itself who is to have an elective office, on its own ideas of what the law ought to be rather than what it is, such statute is valid if the word "unjust" is properly construed as synonymous with "unlawful," meaning that the court must adhere to the standards of campaign conduct laid down by a corrupt practices act.[8]

Footnotes

1 Minn.—State ex rel. Atty. Gen. v. Young, 29 Minn. 474, 9 N.W. 737 (1881).
Pa.—In re Dickson City Council, 73 Pa. D. & C. 358, 1951 WL 3411 (Quar. Sess. 1951).

2 Ala.—In re Opinion of the Justices, 249 Ala. 312, 31 So. 2d 309 (1947).
Ark.—Yarbrough v. Beardon, 206 Ark. 553, 177 S.W.2d 38 (1944).

3 La.—McGee v. Lee, 328 So. 2d 159 (La. 1976).

4 Tex.—Hines v. State, 83 Tex. Crim. 195, 202 S.W. 91 (1918).

5 Ky.—Stephenson v. Woodward, 182 S.W.3d 162 (Ky. 2005), as modified, (Jan. 19, 2006).
Tex.—Dickson v. Strickland, 114 Tex. 176, 265 S.W. 1012 (1924).

6 Cal.—In re McGee, 36 Cal. 2d 592, 226 P.2d 1 (1951).
Minn.—Scheibel v. Pavlak, 282 N.W.2d 843 (Minn. 1979).

7 W. Va.—Sutherland v. Miller, 79 W. Va. 796, 91 S.E. 993 (1917).

8 Minn.—Dart v. Erickson, 188 Minn. 313, 248 N.W. 706 (1933).

16 C.J.S. Constitutional Law § 364

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

§ 364. Crimes and punishment

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2403, 2404

The legislature may not delegate to the courts the power to define and punish crimes although where the legislature fixes the punishment, it may allow the court to exercise discretion within the limits fixed.

Because the power to define crimes,[1] and fix the punishment therefor,[2] is legislative in character, it may not be delegated to the courts. So, a statute which denounces an offense, but fixes no ascertainable standard of guilt, or is vague and indefinite, is invalid as delegating to the courts the legislative function of defining statutory offenses.[3] That is, the Constitution does not permit a legislature to set by overbroad legislation a net large enough to catch all possible offenders and then leave it to the courts to step inside and say who can be rightfully detained, and who should be set at large.[4]

On the other hand, criminal statutes do not impermissibly vest judiciary with legislative power to declare what conduct is a crime merely because the application of such statutes may require some discretion on the part of the trier of fact.[5] A statute authorizing a trial court, in imposing sentence for a crime, to discriminate between casual or slight violations of the law and

habitual violations, does not delegate legislative power to the court,[6] and the same is true of statutes authorizing the punishment fixed by the legislature to be applied, within the limits so fixed, in the discretion of the court.[7] The legislature may also properly enact statutes which fix no maximum with respect to fine,[8] parole term,[9] or jail term.[10] However, including a parole provision as part of a sentence, but failing to state with sufficient clarity the consequences of violating a condition of that sentence, removes the task of discerning the consequences of a parole violation to judiciary, rather than the legislature, and this has been regarded as going beyond the proper judicial task of construing statutes.[11]

A statute permitting the trial judge to sentence convicted defendants either as felons or misdemeanants is not an unconstitutional delegation of legislative authority.[12] A state legislature may also delegate to the courts the power to prescribe rules of criminal procedure, providing such rules are, in fact, procedural,[13] but may not delegate to the courts the legislative function of enacting rules of evidence in criminal trials.[14] A statute providing for the annulment of a conviction by the courts does not constitute an unconstitutional delegation of legislative power to the courts.[15]

Sentencing guidelines.

In delegating the power to promulgate sentencing guidelines for every federal offense to an independent Sentencing Commission in the judicial branch, Congress has not granted the Commission excessive legislative discretion in violation of the constitutionally based nondelegation doctrine, nor has it violated separation-of-powers principles.[16] State sentencing guidelines, recommended by a sentencing guidelines commission and adopted in the form of rules by the state's supreme court, have been ruled unconstitutional prior to the date the legislature adopted the rules but valid thereafter.[17]

Contempt of legislature.

The principle of separation of powers is not violated by the legislature's authorizing the trial of contempt of the legislature in the courts of law.[18]

Delegation to jury.

The legislature may not abdicate to juries its responsibilities for setting the standards of the criminal law.[19] However, an act of the legislature empowering a jury to assess punishment within limits prescribed is not an impermissible delegation of legislative power.[20]

Footnotes

1 Ala.—State v. Skinner, 20 Ala. App. 204, 101 So. 327 (1924).
La.—State v. Anders, 820 So. 2d 513 (La. 2002).
Wash.—State v. Chavez, 134 Wash. App. 657, 142 P.3d 1110 (Div. 2 2006), aff'd, 163 Wash. 2d 262, 180 P.3d 1250 (2008).

2 Ala.—State v. Skinner, 20 Ala. App. 204, 101 So. 327 (1924).
Mandatory death sentence unconstitutional
Wyo.—Kennedy v. State, 559 P.2d 1014 (Wyo. 1977).

3 U.S.—U.S. v. Ragen, 314 U.S. 513, 62 S. Ct. 374, 86 L. Ed. 383 (1942).
Colo.—People v. Smith, 638 P.2d 1 (Colo. 1981).
Conn.—State v. Smith, 183 Conn. 17, 438 A.2d 1165 (1981).
Tendency towards causation

Statute which authorizes the punishment of any act which manifestly tends to cause any child to become a delinquent child was too vague and unconstitutionally delegated legislative power to judges.
Or.—State v. Hodges, 254 Or. 21, 457 P.2d 491 (1969).

4 U.S.—City of Chicago v. Morales, 527 U.S. 41, 119 S. Ct. 1849, 144 L. Ed. 2d 67, 72 A.L.R.5th 665 (1999).
Fla.—Schultz v. State, 361 So. 2d 416 (Fla. 1978).

5 Mo.—State v. Dale, 775 S.W.2d 126 (Mo. 1989).

6 U.S.—Doerning v. U.S., 49 F.2d 44 (C.C.A. 6th Cir. 1931); Norris v. U.S., 49 F.2d 856 (C.C.A. 8th Cir. 1931).

Habitual or multiple offender statute
Ala.—Livingston v. State, 419 So. 2d 270 (Ala. Crim. App. 1982).
N.J.—State v. James, 165 N.J. Super. 173, 397 A.2d 1113 (App. Div. 1979).
Wash.—State v. Anderson, 12 Wash. App. 171, 528 P.2d 1003 (Div. 1 1974).

7 U.S.—U.S. v. Jones, 540 F.2d 465 (10th Cir. 1976).
Ala.—Kirby v. State, 899 So. 2d 968 (Ala. 2004).
La.—State v. Victorian, 332 So. 2d 220 (La. 1976).
N.Y.—People v. Bailey, 60 Misc. 2d 283, 302 N.Y.S.2d 874 (County Ct. 1969).

Alternative punishment
"Alternative" statute, providing alternative punishment if the death penalty for capital murder should be declared unconstitutional, does not constitute an improper delegation of legislative power to courts.
Mo.—State v. Duren, 547 S.W.2d 476 (Mo. 1977).

Consecutive or concurrent terms
Ind.—Mott v. State, 273 Ind. 216, 402 N.E.2d 986 (1980).

Preclusion of parole
Mont.—Cavanaugh v. Crist, 189 Mont. 274, 615 P.2d 890 (1980).

8 Ala.—Dickerson v. State, 414 So. 2d 998 (Ala. Crim. App. 1982).
S.C.—Singletary v. Wilson, 191 S.C. 153, 3 S.E.2d 802 (1939).

9 U.S.—Walberg v. U.S., 763 F.2d 143 (2d Cir. 1985); U.S. v. Rivera, 825 F.2d 152 (7th Cir. 1987); U.S. v. Jones, 540 F.2d 465 (10th Cir. 1976).

10 Ala.—Dickerson v. State, 414 So. 2d 998 (Ala. Crim. App. 1982).
Alaska—Larson v. State, 564 P.2d 365 (Alaska 1977).
N.M.—State v. Turnbow, 1970-NMSC-033, 81 N.M. 254, 466 P.2d 100 (1970).

Relation to other statute
Statute could not be considered invalid as an improper delegation of power even if it did not expressly limit and fix a maximum penalty which might be imposed, but such statute had to be considered valid if the maximum penalty was fixed by relation to the general or related statute.
U.S.—Sam v. U.S., 385 F.2d 213 (10th Cir. 1967).
Mo.—State v. Owens, 582 S.W.2d 366 (Mo. Ct. App. S.D. 1979).
N.M.—State v. Sisneros, 81 N.M. 194, 1970-NMCA-013, 464 P.2d 924 (Ct. App. 1970).

11 Ariz.—State v. Wagstaff, 164 Ariz. 485, 794 P.2d 118 (1990).

12 Ill.—People v. Peterson, 16 Ill. App. 3d 1025, 307 N.E.2d 405 (3d Dist. 1974).
Mont.—Petition of Gibson, 153 Mont. 454, 457 P.2d 767 (1969).
Or.—State v. Ronniger, 7 Or. App. 447, 492 P.2d 298 (1971).

13 Ark.—Jennings v. State, 276 Ark. 217, 633 S.W.2d 373 (1982).

14 Tex.—O'Bryan v. State, 591 S.W.2d 464 (Tex. Crim. App. 1979).

15 Kan.—State v. Miller, 214 Kan. 538, 520 P.2d 1248 (1974).

16 U.S.—Mistretta v. U.S., 488 U.S. 361, 109 S. Ct. 647, 102 L. Ed. 2d 714 (1989); U.S. v. Victoria, 877 F.2d 338 (5th Cir. 1989); U.S. v. Alamillo, 941 F.2d 1085 (10th Cir. 1991).

Guidelines advisory rather than mandatory
The U.S. Supreme Court has rendered the federal sentencing guidelines advisory only and replaced the prior statutory standard of appellate review with review for unreasonableness.
U.S.—U.S. v. Booker, 543 U.S. 220, 125 S. Ct. 738, 160 L. Ed. 2d 621 (2005).

17 Fla.—Smith v. State, 537 So. 2d 982 (Fla. 1989).

18 La.—Joint Legislative Committee of Legislature v. Strain, 263 La. 488, 268 So. 2d 629 (1972).

19 U.S.—Smith v. Goguen, 415 U.S. 566, 94 S. Ct. 1242, 39 L. Ed. 2d 605 (1974); Florida Businessmen for Free Enterprise v. City of Hollywood, 673 F.2d 1213 (11th Cir. 1982).
Or.—State v. Hodges, 254 Or. 21, 457 P.2d 491 (1969).
Adequate standards regarding obscenity
La.—State v. Burch, 365 So. 2d 1263 (La. 1978).

20 Tex.—Hughes v. State, 132 Tex. Crim. 639, 106 S.W.2d 698 (1937).
Possible death penalty
Cal.—People v. Williams, 71 Cal. 2d 614, 79 Cal. Rptr. 65, 456 P.2d 633 (1969).
Kan.—State v. Latham, 190 Kan. 411, 375 P.2d 788 (1962).
N.Y.—People v. Fitzpatrick, 61 Misc. 2d 1043, 308 N.Y.S.2d 18 (County Ct. 1970).

End of Document

16 C.J.S. Constitutional Law § 365

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

B. Legislative Powers and Delegation Thereof

4. Delegation of Powers

d. Delegation to Judiciary

§ 365. Other powers delegated

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2403, 2404

Particular delegations by the legislature to the judiciary have been ruled valid or invalid under the rule forbidding the delegation of legislative powers to the judiciary.

There is distinction between the judicial function of declaring a rate unreasonable and the legislative one of establishing a rate as reasonable.[1] Thus, the power to fix rates to be charged by public utilities has been determined to be a legislative function which cannot be conferred on the courts directly or by providing for review of proceedings of a public utility commission or other public body;[2] but the courts have been ruled able to determine what constitutes a reasonable rate to be charged by a public service company[3] and may be given authority on appeal from a commission or other administrative body to determine whether the rates established by such body are so unreasonable as to impair constitutional rights.[4]

Although there is some authority to the contrary,[5] the courts may be authorized to ascertain the value of the property of a public service company.[6]

Highways and public grounds.

The question whether a highway should be vacated is legislative and its determination cannot be committed to the courts.[7] On the other hand, it has been said that a statute authorizing a court to vacate plats and adjudge title to streets, alleys, and public grounds to be in persons entitled thereto does not delegate legislative powers to the judiciary[8] and that a court may be given the power to establish a highway extending into more than one county.[9]

Municipal finance.

A statute authorizing the court to appoint an administrator for an insolvent municipal corporation with authority, subject to the direction of the court making the appointment, to control the fiscal affairs of the municipality, imposes legislative functions on the judiciary and is invalid;[10] but a statute providing that municipalities may finance improvements by bonds and that in case of default a court may appoint a receiver to collect revenues and make payments to the bondholders under the direction of the court is valid.[11]

Franchises.

The legislature may delegate to courts the power to grant franchises,[12] but the intent to make such a delegation must be shown by an unequivocal declaration in the statute.[13]

Footnotes

1 U.S.—Detroit & M. Ry. Co. v. Michigan R. R. Commission, 235 U.S. 402, 35 S. Ct. 126, 59 L. Ed. 288 (1914).

2 Ind.—Public Service Commission v. City of Indianapolis, 235 Ind. 70, 131 N.E.2d 308 (1956).
Okla.—Oklahoma Cotton Ginners' Ass'n v. State, 1935 OK 1004, 174 Okla. 243, 51 P.2d 327 (1935).
Tex.—Daniel v. Tyrrell & Garth Inv. Co., 127 Tex. 213, 93 S.W.2d 372 (1936).

3 Iowa—Davenport Water Co. v. Iowa State Commerce Commission, 190 N.W.2d 583 (Iowa 1971).
N.Y.—Trustees of Village of Saratoga Springs v. Saratoga Gas, Electric Light & Power Co., 191 N.Y. 123, 83 N.E. 693 (1908).

4 U.S.—U.S. v. Jones, 336 U.S. 641, 69 S. Ct. 787, 93 L. Ed. 938 (1949).
Ala.—State v. Southern Bell Telephone & Telegraph Co., 234 Ala. 545, 176 So. 308 (1937).
Fla.—Florida Power Corp. v. Pinellas Utility Bd., 40 So. 2d 350 (Fla. 1949).

5 U.S.—In re Macfarland, 30 App. D.C. 365, 1908 WL 27947 (App. D.C. 1908).

6 U.S.—Des Moines Water Co. v. City of Des Moines, 206 F. 657 (C.C.A. 8th Cir. 1913).

7 Minn.—Rolf v. Town of Hancock, Carver County, 167 Minn. 187, 208 N.W. 757 (1926).

8 Minn.—In re Hull, 163 Minn. 439, 204 N.W. 534, 49 A.L.R. 320 (1925).

9 Minn.—In re Highway of Fillmore and Houston Counties, 158 Minn. 302, 197 N.W. 741 (1924).

10 Or.—City of Enterprise v. State, 156 Or. 623, 69 P.2d 953 (1937).

11 U.S.—Farmington Tp. v. Warrenville State Bank, 185 F.2d 260 (6th Cir. 1950).
Colo.—Fladung v. City of Boulder, 165 Colo. 244, 438 P.2d 688 (1968).

12 N.Y.—Ocean Beach Ferry Corp. v. Incorporated Village of Ocean Beach, 298 N.Y. 30, 80 N.E.2d 137 (1948).

13 N.C.—North Carolina Utilities Commission v. McLean, 227 N.C. 679, 44 S.E.2d 210 (1947).

End of Document

16 C.J.S. Constitutional Law § 366

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

B. Legislative Powers and Delegation Thereof

4. Delegation of Powers

e. Delegation to Local Authorities

(1) In General

§ 366. Delegation to local authorities of powers of a local character and concern

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2434 to 2440

In the absence of constitutional inhibitions, the legislature may delegate to appropriate local governmental agencies, as well as their proper officers and boards, all powers, whether legislative or otherwise, which are incident to municipal government and of purely local concern.

Given that the exercise of legislative power in minute detail is impracticable,[1] the general doctrine prohibiting the delegation of legislative powers has no application to the vesting of such powers in political subdivisions created for the purpose of local government.[2] Thus, in the absence of constitutional inhibitions,[3] the legislature may expressly or implicitly[4] delegate to appropriate local governmental entities,[5] such as municipal corporations,[6] counties,[7] and towns,[8] as well as their proper officers and boards,[9] all powers, whether legislative or otherwise, which are incident to municipal government and of purely local concern. This includes police power,[10] the authority to legislate with respect to local affairs,[11] in other words, to frame and enforce such by-laws, ordinances, rules, and regulations as are incident to local self-government,[12] and to carry out certain

functions which, although limited in their scope, are, in their performance, an exercise of sovereignty.[13] Although matters which must be dealt with at the state level are not delegable,[14] and legislative power cannot be delegated to local boards, agencies, or officers, other than legislative bodies,[15] the legislature may impose on such organizations the authority as agents of the State to carry out and perform a state function or purpose.[16] In other words, the legislature may delegate to such boards, agencies, or officers administrative functions in carrying out the purpose of the statute, and various governmental powers for the more efficient administration of laws,[17] including fact-finding[18] and the enactment of implementing rules and regulations,[19] provided clear limits and adequate norms or standards are established for their guidance.[20]

There is no definite line of separation between the powers that must be directly exercised by the legislature, and those which may be delegated to municipalities,[21] but in delegating its powers, the legislature is bound by constitutional limitations.[22] Where duties to be performed by local boards are solely ministerial, there is no illegal delegation of legislative power, notwithstanding the exercise of such duties may require consideration of changing conditions,[23] and a delegation may be constitutional even though the exercise of delegated power may involve not only administrative but also quasi-legislative functions.[24]

The legislature cannot surrender the sovereignty of the State to municipalities to the extent of losing control over them,[25] nor can the power delegated exceed that possessed by the legislature from which the power is immediately derived.[26]

Statutory construction.

Statutes delegating legislative powers to local authorities are subject to the general presumption in favor of their validity[27] but are to be strictly construed against any greater delegation of legislative power than clearly appears from the language used.[28]

Footnotes

1 Kan.—State ex rel. Hawks v. City of Topeka, 176 Kan. 240, 270 P.2d 270 (1954).

2 Conn.—Stafford Higgins Industries, Inc. v. City of Norwalk, 245 Conn. 551, 715 A.2d 46 (1998).
Kan.—Cogswell v. Sherman County, 238 Kan. 438, 710 P.2d 1331 (1985).
Me.—Central Maine Power Co. v. Town of Lebanon, 571 A.2d 1189 (Me. 1990).
Vt.—Stowe Citizens for Responsible Government v. State, 169 Vt. 559, 730 A.2d 573, 135 Ed. Law Rep. 193 (1999).
Broad discretion
State legislature has broad discretion in delegating governmental power to public corporations.
Minn.—Waters v. Putnam, 289 Minn. 165, 183 N.W.2d 545 (1971).
Expansive view
It is fitting to take an expansive view of powers which may be constitutionally given to local government inasmuch as legislature is free to supersede local ordinances if it thinks it advisable to do so.
N.J.—Inganamort v. Borough of Fort Lee, 62 N.J. 521, 303 A.2d 298 (1973).
Implementation at local level
Decision of legislature that development of convention facilities is matter of statewide import, but at same time is most efficiently effectuated by implementation at local level is not infirm as improper delegation of legislative power.
W. Va.—State ex rel. City of Charleston v. Bosely, 165 W. Va. 332, 268 S.E.2d 590 (1980).
Rules of subordinate nature
Power of general legislation is not delegable, but power to make rules of a subordinate nature to a general law to meet necessities of government is delegable.
U.S.—Coe v. Reynolds, 529 F. Supp. 488 (D.N.H. 1982).

3 Cal.—Arnold v. Sullenger, 200 Cal. 632, 254 P. 267 (1927).
Ill.—People v. City of Chicago, 413 Ill. 83, 108 N.E.2d 16 (1952).
Wash.—State ex rel. Kurtz v. Pratt, 45 Wash. 2d 151, 273 P.2d 516 (1954).

4 La.—Safford v. Bayou Lafourche Fresh Water Dist., 872 So. 2d 1127 (La. Ct. App. 1st Cir. 2004), writ denied, 872 So. 2d 1086 (La. 2004).

5 La.—Board of Directors of Louisiana Recovery Dist. v. All Taxpayers, Property Owners, and Citizens of State of La., 529 So. 2d 384 (La. 1988).
Okla.—Teeter v. City of Edmond, 2004 OK 5, 85 P.3d 817 (Okla. 2004).
W. Va.—Petition of City of Beckley to Annex, by Minor Boundary Adjustment, West Virginia Route 3 Right-of-Way Beginning at Present Corporate Limits, 194 W. Va. 423, 460 S.E.2d 669 (1995).

Factors considered

A three-part analysis for determining the propriety of the exercise of legislative authority by a municipality includes a consideration of whether a state constitution prohibits the delegation of municipal power on a particular subject because of a need for uniformity of regulations throughout the state, whether the legislature has in fact done so, and whether any delegation of power to the municipality has been preempted by other state statutes dealing with the same subject matter.
N.J.—Dome Realty, Inc. v. City of Paterson, 83 N.J. 212, 416 A.2d 334, 20 A.L.R.4th 1219 (1980).

Superior knowledge of municipality

Where a municipal body is in a position to have more knowledge on a subject or to do things more advantageously than a legislative body, the legislature may lawfully confer such legislative power on the municipality.
Ill.—Loomis v. Keehn, 400 Ill. 337, 80 N.E.2d 368 (1948).

When power delegated

Power to municipal authorities to legislate concerning local matters is regarded as delegated only when given in express terms or necessarily implied from powers expressly given.
Ill.—City of Marion v. Criolo, 278 Ill. 159, 115 N.E. 820 (1917).

6 W. Va.—State ex rel. State Line Sparkler of WV, Ltd. v. Teach, 187 W. Va. 271, 418 S.E.2d 585 (1992).

7 W. Va.—State ex rel. State Line Sparkler of WV, Ltd. v. Teach, 187 W. Va. 271, 418 S.E.2d 585 (1992).

8 R.I.—Newport Court Club Associates v. Town Council of the Town of Middletown, 800 A.2d 405 (R.I. 2002).

9 Mass.—Town of Warren v. Hazardous Waste Facility Site Safety Council, 392 Mass. 107, 466 N.E.2d 102 (1984).
Okla.—Teeter v. City of Edmond, 2004 OK 5, 85 P.3d 817 (Okla. 2004).
Nev.—City of Sparks v. Best, 96 Nev. 134, 605 P.2d 638 (1980).

Board of police commissioners

N.J.—Hofbauer v. Board of Police Com'rs of City of East Orange, 133 N.J.L. 293, 44 A.2d 80 (N.J. Sup. Ct. 1945).

Redevelopment agency

Cal.—Redevelopment Agency v. Shepard, 75 Cal. App. 3d 453, 142 Cal. Rptr. 212 (1st Dist. 1977).

10 Vt.—State v. Curley-Egan, 180 Vt. 305, 2006 VT 95, 910 A.2d 200, 214 Ed. Law Rep. 682 (2006).

11 Iowa—Richards v. City of Muscatine, 237 N.W.2d 48 (Iowa 1975).
Kan.—Von Ruden v. Miller, 231 Kan. 1, 642 P.2d 91 (1982).
N.H.—Opinion of the Justices, 143 N.H. 429, 725 A.2d 1082, 133 Ed. Law Rep. 172 (1999).

Matters of local concern

N.H.—Webster v. Town of Candia, 146 N.H. 430, 778 A.2d 402 (2001).
W. Va.—State ex rel. State Line Sparkler of WV, Ltd. v. Teach, 187 W. Va. 271, 418 S.E.2d 585 (1992).

Regional planning compact

Nev.—State ex rel. List v. Douglas County, 90 Nev. 272, 524 P.2d 1271 (1974) (rejected on other grounds by, Attorney General v. Gypsum Resources, 294 P.3d 404, 129 Nev. Adv. Op. No. 4 (Nev. 2013)).

12 Iowa—Koelling v. Board of Trustees of Mary Frances Skiff Memorial Hospital, 259 Iowa 1185, 146 N.W.2d 284 (1966).
N.D.—In re Garrison Diversion Conservancy Dist., 144 N.W.2d 82 (N.D. 1966).
Wash.—Snohomish County Builders Ass'n v. Snohomish Health Dist., 8 Wash. App. 589, 508 P.2d 617 (Div. 1 1973).

Exception to general rule

Conferring proper powers upon municipal corporations to exercise local self-government is an exception to the rule which forbids the legislature from delegating any of its power to subordinate divisions.

Wash.—Amalgamated Transit Union Local 587 v. State, 142 Wash. 2d 183, 11 P.3d 762 (2000), as amended, (Nov. 27, 2000) and opinion corrected on other grounds, 27 P.3d 608 (Wash. 2001).

13 Ariz.—City of Bisbee v. Cochise County, 52 Ariz. 1, 78 P.2d 982 (1938).

Iowa—Koelling v. Board of Trustees of Mary Frances Skiff Memorial Hospital, 259 Iowa 1185, 146 N.W.2d 284 (1966).

N.D.—In re Garrison Diversion Conservancy Dist., 144 N.W.2d 82 (N.D. 1966).

Indian governing body

U.S.—Nance v. E.P.A., 645 F.2d 701 (9th Cir. 1981).

14 Kan.—Von Ruden v. Miller, 231 Kan. 1, 642 P.2d 91 (1982).

N.J.—Inganamort v. Borough of Fort Lee, 62 N.J. 521, 303 A.2d 298 (1973).

Matters of local or statewide concern

(1) State constitutional provision that cities and villages organized pursuant to state law are empowered to determine their local affairs and government does not give the legislature power to delegate legislative authority to cities or villages in matters primarily of state-wide concern.

Wis.—State ex rel. Hammermill Paper Co. v. La Plante, 58 Wis. 2d 32, 205 N.W.2d 784 (1973).

(2) Doctrine which forbids delegation to municipalities of power to enact an ordinance upon the subject of wills and descent and distribution would equally bar the legislature from leaving it to several municipalities to say whether state statutes upon those subjects will be operative within their borders.

N.J.—Inganamort v. Borough of Fort Lee, 62 N.J. 521, 303 A.2d 298 (1973).

15 Ky.—Miller v. Covington Development Authority, 539 S.W.2d 1 (Ky. 1976).

N.D.—In re Garrison Diversion Conservancy Dist., 144 N.W.2d 82 (N.D. 1966).

Wyo.—Stewart v. City of Cheyenne, 60 Wyo. 497, 154 P.2d 355 (1944).

Determining whether and when law operative

Statute which authorizes county authorities to determine whether and when a law should become operative in a county does not delegate to such authorities the power to enact a law.

Ga.—DeJarnette v. Hospital Authority of Albany, 195 Ga. 189, 23 S.E.2d 716 (1942).

Kan.—Russell State Bank of Russell v. Steinle, 159 Kan. 293, 153 P.2d 906 (1944).

N.J.—Bergen County Sewer Authority v. Borough of Little Ferry, 7 N.J. Super. 213, 72 A.2d 886 (App. Div. 1950).

16 Mass.—Board of Health of North Adams v. Mayor of North Adams, 368 Mass. 554, 334 N.E.2d 34 (1975).

N.D.—In re Garrison Diversion Conservancy Dist., 144 N.W.2d 82 (N.D. 1966).

Wis.—City of Milwaukee v. Sewerage Commission of City of Milwaukee, 268 Wis. 342, 67 N.W.2d 624 (1954).

17 U.S.—Koplin v. Ohio National Life Insurance Company, 323 U.S. 674, 65 S. Ct. 136, 89 L. Ed. 548 (1944).

Fla.—Dawson v. Brown, 187 So. 2d 36 (Fla. 1966).

N.D.—In re Garrison Diversion Conservancy Dist., 144 N.W.2d 82 (N.D. 1966).

Institution of action for injunction

Ill.—Metropolitan Sanitary Dist. of Greater Chicago v. U.S. Steel Corp., 41 Ill. 2d 440, 243 N.E.2d 249 (1968).

18 Ariz.—Peters v. Frye, 71 Ariz. 30, 223 P.2d 176 (1950).

N.J.—Union County Park Commission v. Board of Chosen Freeholders of Union County, 3 N.J. 73, 68 A.2d 870 (1949).

N.D.—Ferch v. Housing Authority of Cass County, 79 N.D. 764, 59 N.W.2d 849 (1953).

19 Fla.—State v. Escambia County, 52 So. 2d 125 (Fla. 1951).

Ky.—Barnes v. Jacobsen, 417 S.W.2d 224 (Ky. 1967).

N.C.—Wake Cares, Inc. v. Wake County Bd. of Educ., 190 N.C. App. 1, 660 S.E.2d 217, 231 Ed. Law Rep. 951 (2008), decision aff'd, 363 N.C. 165, 675 S.E.2d 345 (2009).

Tenn.—Chattanooga-Hamilton County Hospital Authority v. City of Chattanooga, 580 S.W.2d 322 (Tenn. 1979).

20 § 367.

21 Fla.—City of Jacksonville v. Bowden, 67 Fla. 181, 64 So. 769 (1914).

22 Conn.—Town of New Milford v. SCA Services of Connecticut, Inc., 174 Conn. 146, 384 A.2d 337 (1977).
N.Y.—Fullerton v. City of Schenectady, 285 A.D. 545, 138 N.Y.S.2d 916 (3d Dep't 1955), judgment aff'd, 309 N.Y. 701, 128 N.E.2d 413 (1955), reargument denied, remittitur amended, 309 N.Y. 855, 130 N.E.2d 909 (1955).
Wash.—Brown v. City of Cle Elum, 145 Wash. 588, 261 P. 112, 55 A.L.R. 1175 (1927).

23 N.Y.—People ex rel. Broderick v. Goldfogle, 213 A.D. 677, 211 N.Y.S. 85 (1st Dep't 1925), aff'd, 242 N.Y. 540, 152 N.E. 418 (1926).
N.D.—In re Garrison Diversion Conservancy Dist., 144 N.W.2d 82 (N.D. 1966).

24 Ga.—Mosley v. Garrett, 182 Ga. 810, 187 S.E. 20 (1936).

Expediency

A legislature may, under the constitution, confer on a board of county commissioners such power of local legislation and administration as it deems expedient.
Kan.—Kowing v. Douglas County Kaw Drainage Dist., 167 Kan. 387, 207 P.2d 457 (1949).

25 Fla.—Merrell v. City of St. Petersburg, 91 Fla. 858, 109 So. 315 (1926).
Ind.—Indiana University v. Hartwell, 174 Ind. App. 325, 367 N.E.2d 1090 (1977).
Or.—Straw v. Harris, 54 Or. 424, 103 P. 777 (1909).

26 Ark.—McClendon v. City of Hope, 217 Ark. 367, 230 S.W.2d 57 (1950).
Ill.—Cremer v. Peoria Housing Authority, 399 Ill. 579, 78 N.E.2d 276 (1948).
Va.—Industrial Development Authority of City of Chesapeake v. Suthers, 208 Va. 51, 155 S.E.2d 326 (1967).

27 § 249.

28 N.M.—Stout v. City of Clovis, 1932-NMSC-073, 37 N.M. 30, 16 P.2d 936 (1932).
N.D.—In re Garrison Diversion Conservancy Dist., 144 N.W.2d 82 (N.D. 1966).

End of Document

16 C.J.S. Constitutional Law § 367

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

B. Legislative Powers and Delegation Thereof

4. Delegation of Powers

e. Delegation to Local Authorities

(1) In General

§ 367. Standards of delegation

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2434 to 2440

Generally, a delegation of legislative power to a local authority must be restrained by clear limits and adequate norms or standards, fixed by the legislature, although the need for standards may be reduced with respect to matters of purely local import.

Vagueness and uncertainty of terms by which a legislative power is delegated to a local authority render such delegation improper.[1] Clear limits and adequate norms or standards, fixed by the legislature,[2] must be established for the guidance of local authorities,[3] such as county governing boards or officers,[4] in acting pursuant to the authority delegated, so as to protect against unnecessary and uncontrolled exercises of discretionary power[5] or abuses of discretion.[6] However, this does not preclude the exercise of some discretion by local officials,[7] and there is authority that the legislature may properly grant broad powers to municipal corporations without at the same time prescribing detailed standards and guidelines so long as those powers relate to local purposes of regulation or administration.[8]

Footnotes

1 Neb.—Kwik Shop, Inc. v. City of Lincoln, 243 Neb. 178, 498 N.W.2d 102 (1993).
Vt.—Stowe Citizens for Responsible Government v. State, 169 Vt. 559, 730 A.2d 573, 135 Ed. Law Rep. 193 (1999).
Comprehensive plan not impermissibly vague
Me.—Ogunquit Sewer Dist. v. Town of Ogunquit, 1997 ME 33, 691 A.2d 654 (Me. 1997).
Due process
Under the due process vagueness rubric, the proper standard for a delegation of power from the state legislature to a municipality, based on both constitutional analysis and the reality of state and local governmental relations, is that such a delegation should be judged by whether it provides reasonable notice of what conduct may be authorized or prohibited under its provisions.
Conn.—Stafford Higgins Industries, Inc. v. City of Norwalk, 245 Conn. 551, 715 A.2d 46 (1998).

2 U.S.—Berman v. Parker, 348 U.S. 26, 75 S. Ct. 98, 99 L. Ed. 27 (1954).
Conn.—Town of New Milford v. SCA Services of Connecticut, Inc., 174 Conn. 146, 384 A.2d 337 (1977).
Minn.—Collis v. City of Bloomington, 310 Minn. 5, 246 N.W.2d 19 (1976).
Ohio—City of Oakwood v. Gummer, 38 Ohio St. 2d 164, 67 Ohio Op. 2d 179, 311 N.E.2d 517 (1974).
Ascertainment of standards
Absence of definition of the language in a statute does not render the statute an unconstitutional delegation of authority, as wording in the statute establishes a standard or guideline.
N.C.—In re Annexation Ordinance No. D-21927 Adopted by City of Winston-Salem, N.C., December 17, 1979-Area I, 303 N.C. 220, 278 S.E.2d 224 (1981).
Specific details; reasonableness
Statute did not constitute an unconstitutional delegation of legislative authority notwithstanding it was not definitive as to all specific details and allowed "reasonable" rules to be formulated.
Mont.—Vogel v. Board of County Com'rs of Gallatin County, 157 Mont. 70, 483 P.2d 270 (1971).

3 Kan.—State ex rel. Tomasic v. Kansas City, 237 Kan. 572, 701 P.2d 1314 (1985).
Me.—Ogunquit Sewer Dist. v. Town of Ogunquit, 1997 ME 33, 691 A.2d 654 (Me. 1997).
Mass.—Tri-Nel Management, Inc. v. Board of Health of Barnstable, 433 Mass. 217, 741 N.E.2d 37 (2001).
Neb.—Kwik Shop, Inc. v. City of Lincoln, 243 Neb. 178, 498 N.W.2d 102 (1993).
Pa.—Wings Field Preservation Associates, L.P. v. Com., Dept. of Transp., 776 A.2d 311 (Pa. Commw. Ct. 2001).
Wash.—Pierce County v. State, 159 Wash. 2d 16, 148 P.3d 1002 (2006).
Vt.—In re Handy, 171 Vt. 336, 764 A.2d 1226 (2000).

4 Fla.—Pinellas County Dept. of Consumer Affairs v. Castle, 392 So. 2d 1292 (Fla. 1980).
N.C.—Porter v. Suburban Sanitation Service, Inc., 283 N.C. 479, 196 S.E.2d 760 (1973).
Wash.—State ex rel. Namer Inv. Corp. v. Williams, 73 Wash. 2d 1, 435 P.2d 975 (1968).
Air pollution act
Ariz.—State v. Arizona Mines Supply Co., 107 Ariz. 199, 484 P.2d 619, 46 A.L.R.3d 745 (1971).
Empaneling juries
Fla.—Smith v. Portante, 212 So. 2d 298 (Fla. 1968).

5 Colo.—City and County of Denver By and Through Board of Water Com'rs v. Board of County Com'rs of Grand County, 782 P.2d 753 (Colo. 1989).

6 Mass.—C & S Wholesale Grocers, Inc. v. City of Westfield, 436 Mass. 459, 766 N.E.2d 63 (2002).
Wash.—Pierce County v. State, 159 Wash. 2d 16, 148 P.3d 1002 (2006).

7 Iowa—State v. Steenhoek, 182 N.W.2d 377 (Iowa 1970).

8 Wash.—American Federation of Teachers, Yakima Local 1485 v. Yakima School Dist. No. 7, 74 Wash. 2d 865, 447 P.2d 593 (1968).
Grant in general terms
The fact that a statutory grant of legislative authority to a municipal corporation is made in general terms is not a basis for constitutional challenge.

Neb.—Blackledge v. Richards, 194 Neb. 188, 231 N.W.2d 319 (1975).

End of Document

16 C.J.S. Constitutional Law § 368

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

B. Legislative Powers and Delegation Thereof

4. Delegation of Powers

e. Delegation to Local Authorities

(1) In General

§ 368. Overlapping delegations; redelegation and revocation of delegation

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2434 to 2440

A state may designate more than one agency to operate in the same field, and although agencies generally may not redelegate their authority, a state may revoke delegated authority and either redelegate it to another agency or exercise the authority itself.

There is no constitutional prohibition against a state designating more than one agency to operate in the same field.[1]

Redelegation and revocation.

While the legislature may, subject to constitutional restrictions, delegate its powers in certain respects to local governmental bodies, such local bodies may not, at least in the absence of express authorization, delegate their powers or duties except such

as purely ministerial or executive.[2] However, in the exercise of the functions committed to them by the legislature, municipal legislative bodies may enact ordinances imposing on the appropriate municipal officers executive or ministerial duties.[3]

The legislature may revoke the powers it has delegated,[4] and redelegate such powers to another agency,[5] or the legislature may itself exercise such powers notwithstanding the delegation.[6]

Footnotes

1 Md.—Montgomery County v. Maryland-Washington Metropolitan Dist., 202 Md. 293, 96 A.2d 353 (1953).
Drilling oil wells
Okla.—Morgan Petroleum Co. v. Oklahoma City, 1934 OK 216, 167 Okla. 632, 31 P.2d 594 (1934).

2 U.S.—Arkansas Louisiana Gas Co. v. City of Texarkana, 97 F.2d 5 (C.C.A. 5th Cir. 1938), judgment rev'd on other grounds, 306 U.S. 188, 306 U.S. 620, 59 S. Ct. 448, 83 L. Ed. 598, 1 Fed. R. Serv. 275 (1939).
Md.—Tighe v. Osborne, 149 Md. 349, 131 A. 801, 43 A.L.R. 819 (1925).
N.Y.—Brown v. Ward, 216 N.Y.S. 402 (Sup 1926).
Authorization by legislature not permissible
State legislature may delegate legislative powers to cities because a state constitution gives it that right, but it may not authorize a city to pass such powers onto an administrative agency.
Ky.—Miller v. Covington Development Authority, 539 S.W.2d 1 (Ky. 1976).

3 Cal.—Los Angeles Gas & Electric Corp. v. City of Los Angeles, 163 Cal. 621, 126 P. 594 (1912).
N.Y.—Parsons Const. Corp. v. City of N.Y., 163 Misc. 932, 298 N.Y.S. 276 (Mun. Ct. 1937).
Ohio—State ex rel. Campbell v. Cincinnati St. Ry. Co., 97 Ohio St. 283, 119 N.E. 735 (1918).
Creation of industrial authority
Va.—Industrial Development Authority of City of Chesapeake v. Suthers, 208 Va. 51, 155 S.E.2d 326 (1967).

4 Cal.—Slavich v. Walsh, 82 Cal. App. 2d 228, 186 P.2d 35 (1st Dist. 1947).
La.—Board of Com'rs of Orleans Levee Dist. v. Department of Natural Resources, 496 So. 2d 281 (La. 1986).
Wash.—Neils v. City of Seattle, 185 Wash. 269, 53 P.2d 848 (1936).

5 Pa.—Crown Products Co. v. Pennsylvania Public Utility Commission, 152 Pa. Super. 345, 32 A.2d 305 (1943).
Wash.—Neils v. City of Seattle, 185 Wash. 269, 53 P.2d 848 (1936).

6 Ill.—City of Chicago v. M. & M. Hotel Co., 248 Ill. 264, 93 N.E. 753 (1910).

16 C.J.S. Constitutional Law § 369

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

B. Legislative Powers and Delegation Thereof

4. Delegation of Powers

e. Delegation to Local Authorities

(2) Delegations as to Particular Matters

§ 369. Creation and expansion of political subdivisions; framing or amendment of charters

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2434 to 2440

The legislature may generally delegate the power to create and expand political subdivisions; however, delegation of the power to frame or amend a municipal charter may or may not be constitutional.

The legislature may delegate to existing municipalities the authority to create municipalities,[1] and powers with reference to the acquisition of property and alteration of municipal boundaries are delegable[2] although the power to alter the corporate limits of a city has been ruled not delegable to such city.[3]

Towns and township boards or committees may be authorized to fix the number and boundaries of districts within the township[4] or to decide whether to enlarge the town's corporate limits.[5]

Statutes may delegate to municipalities the power to classify themselves according to a state definitional and regulatory scheme.[6]

Amendment of charters.

Statutory provisions delegating to municipal corporations the power to frame or amend their own charters are valid under the constitutions of some states,[7] but void under those of others, as delegating legislative power to local authorities.[8]

Footnotes

1 Ill.—Town of Godfrey v. City of Alton, 33 Ill. App. 3d 978, 338 N.E.2d 890 (5th Dist. 1975).
Creation of city by county
Kan.—Matter of Application for Incorporation as The City of Sherwood, 241 Kan. 396, 736 P.2d 875 (1987).

2 Ill.—North Maine Fire Protection Dist. v. Village of Niles, 50 Ill. App. 3d 690, 8 Ill. Dec. 495, 365 N.E.2d 733 (1st Dist. 1977).
Kan.—State ex rel. Jordan v. City of Overland Park, 215 Kan. 700, 527 P.2d 1340 (1974).
W. Va.—Petition of City of Beckley to Annex, by Minor Boundary Adjustment, West Virginia Route 3 Right-of-Way Beginning at Present Corporate Limits, 194 W. Va. 423, 460 S.E.2d 669 (1995).
Central business district
Kan.—State ex rel. Schneider v. City of Topeka, 227 Kan. 115, 605 P.2d 556 (1980).

3 Ga.—Jamison v. City of Atlanta, 225 Ga. 51, 165 S.E.2d 647 (1969).

4 N.H.—Goodrich Falls Elec. Co. v. Howard, 86 N.H. 512, 171 A. 761 (1934).
N.J.—State v. Corker, 67 N.J.L. 596, 52 A. 362 (N.J. Ct. Err. & App. 1902).

5 N.C.—Plemmer v. Matthewson, 281 N.C. 722, 190 S.E.2d 204 (1972).

6 Ark.—Gross v. Homard, 201 Ark. 391, 144 S.W.2d 705 (1940).
Classification of cities
Statute empowering cities having population of 100,000 but less than 500,000 to elect by ordinance to be treated either as a city of second class A or a city of third class was not unconstitutional as an unlawful delegation of legislative power.
Pa.—City of Scranton v. Lynn, 10 Pa. Commw. 222, 310 A.2d 451 (1973).

7 Fla.—State ex rel. Brown v. Emerson, 126 Fla. 576, 171 So. 663 (1936).
N.J.—Bucino v. Malone, 12 N.J. 330, 96 A.2d 669 (1953).
Determination by city clerk
A statute delegating to the city clerk of a city operating under a charter form of government authority to determine the form of an initiative petition relating to the amendment of the charter, was constitutional.
Okla.—In re Initiative Petition No. 4, for Repeal of Charter of City of Cushing, 1933 OK 398, 165 Okla. 8, 23 P.2d 677 (1933).

8 Mich.—Elliott v. City of Detroit, 121 Mich. 611, 84 N.W. 820 (1899).
Legal voters
Where the constitution of a state extends the power of enacting or amending a city charter only to legal voters of a municipality, the legislature is without power to confer such authority on a city council or commission.
Or.—Birnie v. City of La Grande, 78 Or. 531, 153 P. 415 (1915).

16 C.J.S. Constitutional Law § 370

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

B. Legislative Powers and Delegation Thereof

4. Delegation of Powers

e. Delegation to Local Authorities

(2) Delegations as to Particular Matters

§ 370. Criminal offenses and penalties

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2434 to 2440

Authority to define offenses against the state and penalties for their commission cannot be delegated; however, the legislature may authorize a municipal corporation by ordinance to define and punish offenses against the municipality and delegate the power to legislate against offenses already denounced by the general state law.

Authority to define offenses against the State and to designate what acts will be punishable as such cannot be delegated,[1] nor can the power to determine the penalty for the violation of a state law be delegated.[2] However, the legislature may authorize a municipal corporation by ordinance to define and punish offenses against the municipality[3] and delegate the power to legislate against offenses already denounced by the general state law.[4] Moreover, the legislature may delegate the power to determine the existence of facts or circumstances mentioned in a criminal statute upon which the statute becomes operative.[5] Any discretion possessed by the police to determine whether a crime proscribed by statute has occurred is merely a question of probable cause

to arrest and not a flaw in the definition of the crime itself, transforming every police officer into a mini-legislature with power to determine on an ad hoc basis what types of behavior constitute a crime.[6]

CUMULATIVE SUPPLEMENT

Cases:

While the Constitution assigns all legislative power to Congress, Congress simply cannot do its job absent an ability to delegate power under broad general directives, and some judgments must be left to the officers executing the law. (Per Justice Kagan, with three Justices concurring and one Justice concurring in the judgment). U.S. Const. art. 1, § 1. Gundy v. United States, 139 S. Ct. 2116 (2019).

[END OF SUPPLEMENT]

Footnotes

1 Ga.—Long v. State, 202 Ga. 235, 42 S.E.2d 729 (1947).
Or.—State v. Long, 315 Or. 95, 843 P.2d 420 (1992).
Wis.—State ex rel. Keefe v. Schmiege, 251 Wis. 79, 28 N.W.2d 345, 174 A.L.R. 1338 (1947).

2 Tenn.—Fite v. State ex rel. Snider, 114 Tenn. 646, 88 S.W. 941 (1905).
Deferred sentencing
Diversion program did not constitute an unconstitutional delegation of power to the district attorney where the deferred sentencing statute set forth adequate guidelines for imposing conditions of probation on the defendant following drug conviction, and the statute provided adequate standards and safeguards for imposing conditions of deferred judgment.
Colo.—People v. Bishop, 7 P.3d 184 (Colo. App. 1999).
Essentially legislative function
Mass.—Com. v. Diaz, 326 Mass. 525, 95 N.E.2d 666 (1950).

3 Ky.—City of Pineville v. Marshall, 222 Ky. 4, 299 S.W. 1072 (1927).
Mont.—State v. Police Court of City of Deer Lodge, 86 Mont. 297, 283 P. 430 (1929).
Tex.—Ex parte Smalley, 156 S.W.3d 608 (Tex. App. Dallas 2004), petition for discretionary review granted, (June 22, 2005) and petition for discretionary review dismissed, 173 S.W.3d 71 (Tex. Crim. App. 2005).
W. Va.—Butler v. Tucker, 187 W. Va. 145, 416 S.E.2d 262 (1992).
Limited penalties
Statute permitting a city to impose limited penalties for violations of its ordinances was not an unconstitutional delegation of power to an administrative agency.
Mo.—City of Pleasant Valley v. Baker, 991 S.W.2d 725 (Mo. Ct. App. W.D. 1999).
Local self-government
Legislature may delegate to municipal corporations the authority to define offenses, but it may do so only as to such measures as may be justified by the exigencies of local self-government or for convenience in the administration of public affairs.
La.—State v. Maitrejean, 193 La. 824, 192 So. 361 (1939).

4 Del.—Dunn v. Mayor and Council of City of Wilmington, 59 Del. 287, 219 A.2d 153 (1966).
N.Y.—People, on Complaint of Yonofsky, v. Blanchard, 288 N.Y. 145, 42 N.E.2d 7 (1942).
Wis.—State ex rel. Keefe v. Schmiege, 251 Wis. 79, 28 N.W.2d 345, 174 A.L.R. 1338 (1947).

5 Or.—State v. Long, 315 Or. 95, 843 P.2d 420 (1992).

6 Cal.—People v. Superior Court (Caswell), 46 Cal. 3d 381, 250 Cal. Rptr. 515, 758 P.2d 1046 (1988).

End of Document

16 C.J.S. Constitutional Law § 371

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

§ 371. Schools and other educational matters

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2439

Subject to constitutional restrictions, the legislature may delegate to local agencies the power to create and alter school districts and other school organizations.

The legislature may delegate power with reference to education.[1] Specifically, the legislature may delegate to local officers, boards, or other subordinate agencies the power to create, organize, alter, or dissolve school districts and other local school organizations[2] or may, at least, confer on such agencies the power to determine the facts under which the law authorizes a change of boundaries[3] except to the extent that such delegation may exceed or transgress constitutional limitations.[4] A legislature may also delegate authority to create schools by passing a charter school statute.[5] The proper exercise by a subordinate agency of power delegated to it is the same in effect as if such power were directly exercised by the legislature.[6]

The power to legislate, however, may not be delegated to school authorities,[7] and a statute was unconstitutional which left to the arbitrary discretion of an ex officio board the question of altering the boundaries of a school district[8] or gives a county superintendent discretion as to the form, size, and assessed valuation of a high school district, and the number of prospective pupils.[9] Where the legislative policy is determined by the legislature, however, ample administrative powers may be vested in such authorities in order that the legislative rule may properly be enforced[10] so long as the legislature establishes adequate guiding standards for use by the local school authorities.[11]

In the absence of constitutional limitations,[12] the legislature may delegate the management and administration of the public schools to such subordinate agencies as it may select or create,[13] such as boards of education or school directors or trustees,[14] and may confer on them any powers or impose on them any duties not prohibited by the constitution.[15] Such subordinate agents may be authorized to hold elections on school questions,[16] to levy taxes for school purposes,[17] or to provide a superintendent of schools;[18] to fix salaries of school officials;[19] to adopt rules and regulations,[20] governing such matters as the administration of employer-employee relations;[21] and to perform other acts of local self-government in school matters.[22]

CUMULATIVE SUPPLEMENT

Cases:

By delegating supervisory role of superintendent of public instruction to State Charter School Commission, amended version of Charter School Act, which provided for establishment of up to 40 charter schools, did not on its face violate constitutional provision setting forth superintendent's responsibilities; Commission did not interfere with superintendent's statutory duties. Wash. Const. art. 3, § 22; Wash. Rev. Code Ann. § 28A.710.040(5). El Centro De La Raza v. State, 428 P.3d 1143 (Wash. 2018).

[END OF SUPPLEMENT]

Footnotes

1 Minn.—Board of Educ. of City of Minneapolis v. Erickson, 209 Minn. 39, 295 N.W. 302 (1940).
Mo.—Kansas City v. J. I. Case Threshing Mach. Co., 337 Mo. 913, 87 S.W.2d 195 (1935).
Vt.—Stowe Citizens for Responsible Government v. State, 169 Vt. 559, 730 A.2d 573, 135 Ed. Law Rep. 193 (1999).

2 Iowa—Board of Ed. of Community School Dist. of Owasa, Hardin County v. Board of Ed. of Hardin County, 260 Iowa 217, 149 N.W.2d 187 (1967).
Mich.—Penn School Dist. No. 7 v. Board of Ed. of Lewis-Cass Intermediate School Dist. of Cass County, 14 Mich. App. 109, 165 N.W.2d 464 (1968).
Neb.—School Dist. No. 46, Sarpy County, Neb. v. City of Bellevue, 224 Neb. 543, 400 N.W.2d 229, 37 Ed. Law Rep. 660 (1987).
S.D.—Fairview Independent School Dist. No. 115-69 of Hand County v. County Bd. of Ed. of Hand County, 86 S.D. 417, 197 N.W.2d 413 (1972).

3 Ill.—Husser v. Fouth, 386 Ill. 188, 53 N.E.2d 949 (1944).
Neb.—Ruwe v. School Dist. No. 85 of Dodge County, 120 Neb. 668, 234 N.W. 789 (1931).

4 Cal.—Mooney v. Board of Sup'rs of Tulare County, 2 Cal. App. 65, 83 P. 165 (2d Dist. 1905).

5 Cal.—Wilson v. State Bd. of Educ., 75 Cal. App. 4th 1125, 89 Cal. Rptr. 2d 745, 138 Ed. Law Rep. 453 (1st Dist. 1999).

6 Tex.—State v. Morwood, 24 Tex. Civ. App. 24, 57 S.W. 875 (1900), writ refused.

7 Kan.—State ex rel. Donaldson v. Hines, 163 Kan. 300, 182 P.2d 865 (1947).
N.C.—State v. Rhoney, 42 N.C. App. 40, 255 S.E.2d 665 (1979).
N.D.—Rhea v. Board of Education of Devils Lake Special School Dist., 41 N.D. 449, 171 N.W. 103 (1919).
Application of law
Legislature may not delegate legislative power to each county school board to change a law to suit its own purposes, that is, it may not give a deciding body an unlimited number of choices regarding when and how to apply the law.
Mich.—Rowley v. Garvin, 221 Mich. App. 699, 562 N.W.2d 262 (1997).

8 Ill.—People ex rel. Bensenville Community High School District No. 100 v. Rathje, 333 Ill. 304, 164 N.E. 696 (1928).
School territory transfers
School territory transfer statutes, which conferred authority to county superintendents of schools to grant or deny petitions to transfer territory among school districts were unconstitutional delegations of legislative authority.
Mont.—Belgrade Elementary and High School Dist. No. 44 v. Morris, 2000 MT 347, 303 Mont. 245, 15 P.3d 482, 150 Ed. Law Rep. 273 (2000).

9 Ill.—Kenyon v. Moore, 287 Ill. 233, 122 N.E. 548 (1919).

10 N.H.—Opinion of the Justices, 94 N.H. 510, 52 A.2d 297 (1947).
N.D.—Rhea v. Board of Education of Devils Lake Special School Dist., 41 N.D. 449, 171 N.W. 103 (1919).
Tex.—Wilson v. Abilene Independent School Dist., 190 S.W.2d 406 (Tex. Civ. App. Eastland 1945), writ refused w.o.m.

11 Iowa—Stanley v. Southwestern Community College Merged Area (Merged Area XIV), in Counties of Adair, et al., 184 N.W.2d 29 (Iowa 1971).
N.C.—State v. Rhoney, 42 N.C. App. 40, 255 S.E.2d 665 (1979).
Or.—Burkitt v. School Dist. No. 1, Multnomah County, 195 Or. 471, 246 P.2d 566 (1952).
For a general discussion of standards, see § 367.

12 Fla.—State v. Board of Public Instruction of Duval County, 98 Fla. 66, 123 So. 540 (1929).

13 Mo.—State ex rel. School Dist. No. 1 v. Andrae, 216 Mo. 617, 116 S.W. 561 (1909).
Mont.—State ex rel. City of Missoula v. Holmes, 100 Mont. 256, 47 P.2d 624, 100 A.L.R. 581 (1935).
Tex.—Stinson v. Graham, 286 S.W. 264 (Tex. Civ. App. Eastland 1926), writ refused, (Nov. 3, 1926).
Selection of members of board
Ill.—People ex rel. Christensen v. Board of Ed. School Dist. No. 99, Cook County, 393 Ill. 345, 65 N.E.2d 825 (1946).

14 Cal.—Fillmore Union High School Dist. of Ventura County v. Cobb, 5 Cal. 2d 26, 53 P.2d 349 (1935).
Iowa—Lee v. Hoffman, 182 Iowa 1216, 166 N.W. 565 (1918).
S.C.—Powell v. Hargrove, 136 S.C. 345, 134 S.E. 380 (1926).

15 Mont.—Young v. Board of Trustees of Broadwater County High School, 90 Mont. 576, 4 P.2d 725 (1931).

16 S.C.—Burriss v. Brock, 95 S.C. 104, 79 S.E. 193 (1913).

17 Ky.—Turrell v. Board of Ed. of Marshall County, 441 S.W.2d 767 (Ky. 1969).
S.C.—Powell v. Hargrove, 136 S.C. 345, 134 S.E. 380 (1926).
Wis.—Village of West Milwaukee v. Area Bd. of Vocational, Technical and Adult Ed. (Dist. 9), 51 Wis. 2d 356, 187 N.W.2d 387 (1971).
Limitations on taxing authority
(1) Legislature had the constitutional authority to delegate, to a school district, the power to levy a tax which was clearly limited as to amount and purpose.
Neb.—Banks v. Board of Ed. of Chase County High School Dist. No. 15, 202 Neb. 717, 277 N.W.2d 76 (1979).
(2) Fact that a statute empowering school districts to levy taxes for school purposes does not include minimum and maximum limits within which the district may impose tax does not render the statute unconstitutional as an unlawful delegation of legislative powers.
Del.—Brennan v. Black, 34 Del. Ch. 380, 104 A.2d 777 (1954).

18 Conn.—Alcorn ex rel. Hoerle v. Thomas, 127 Conn. 426, 17 A.2d 514 (1941).

19 Ala.—McNeill v. Sparkman, 184 Ala. 96, 63 So. 977 (1913).

20 N.C.—Wake Cares, Inc. v. Wake County Bd. of Educ., 190 N.C. App. 1, 660 S.E.2d 217, 231 Ed. Law Rep. 951 (2008), decision aff'd, 363 N.C. 165, 675 S.E.2d 345 (2009).

21 Wash.—American Federation of Teachers, Yakima Local 1485 v. Yakima School Dist. No. 7, 74 Wash. 2d 865, 447 P.2d 593 (1968).

22 Cal.—Fillmore Union High School Dist. of Ventura County v. Cobb, 5 Cal. 2d 26, 53 P.2d 349 (1935).
Kan.—School District No. 5, Cherokee County v. Community High School of Cherokee County, 146 Kan. 380, 69 P.2d 1102, 113 A.L.R. 172 (1937).
Ky.—Moore v. Johnson, 235 Ky. 774, 32 S.W.2d 353 (1930).

Admission and attendance of pupils

Cal.—Fillmore Union High School Dist. of Ventura County v. Cobb, 5 Cal. 2d 26, 53 P.2d 349 (1935).
Ill.—Proviso Tp. High School No. 209 Board of Education v. Oak Park and River Forest Tp. High School Dist. No. 200 Board of Education, 322 Ill. 217, 153 N.E. 369 (1926).
Kan.—School District No. 5, Cherokee County v. Community High School of Cherokee County, 146 Kan. 380, 69 P.2d 1102, 113 A.L.R. 172 (1937).

Construction of school building

Ill.—Smith v. Board of Ed. of Oswego Community High School Dist., 405 Ill. 143, 89 N.E.2d 893 (1950).
Kan.—State ex rel. Osborn v. Richardson, 174 Kan. 382, 256 P.2d 135 (1953).

Furnishing transportation to pupils

Ky.—Board of Educ. of Bath County v. Goodpaster, 260 Ky. 198, 84 S.W.2d 55 (1935).
Ohio—Minshall v. State, 124 Ohio St. 61, 10 Ohio L. Abs. 60, 176 N.E. 888 (1931).

Hearing panel

Provision providing for a hearing panel to consider charges against a tenured teacher does not unconstitutionally delegate state legislative powers.
N.Y.—Board of Ed. of Belmont Central School Dist. v. Gootnick, 65 A.D.2d 940, 410 N.Y.S.2d 491 (4th Dep't 1978), order modified on other grounds, 49 N.Y.2d 683, 427 N.Y.S.2d 777, 404 N.E.2d 1318 (1980).

Regulation of pedestrian and vehicular traffic on school property

N.C.—State v. Rhoney, 42 N.C. App. 40, 255 S.E.2d 665 (1979).

Term of office of school officer

Ky.—Moore v. Johnson, 235 Ky. 774, 32 S.W.2d 353 (1930).

End of Document

16 C.J.S. Constitutional Law § 372

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

B. Legislative Powers and Delegation Thereof

4. Delegation of Powers

e. Delegation to Local Authorities

(2) Delegations as to Particular Matters

§ 372. Franchises; licensing and regulation of businesses

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2434 to 2440

The legislature has the power to delegate to political subdivisions the power to license and regulate businesses and occupations, including public service companies.

The sovereign power to grant franchises may be delegated to a municipality.[1] The legislature may also delegate power with reference to the right to regulate various forms of businesses,[2] including classifying businesses and occupations for regulation.[3]

The legislature has the power to delegate to local municipalities the power to license businesses and occupations[4] and the sale of intoxicating liquor.[5] While the legislature may delegate to a local administrative officer who has been given control of the granting of licenses a measure of discretion in the formulation of tests for the determination of applicant's fitness, within a standard fixed by statute,[6] a statute which, without fixing any standard, authorizes a local officer in his or her discretion to determine applicant's right to a license or to a renewal thereof, is invalid.[7]

Regulation of public service companies; rates.

The legislature may constitutionally delegate to municipal corporations the power to regulate the business of common carriers within the municipality[8] and that of public utilities.[9] So, the power to regulate the rates of common carriers[10] and other public service companies,[11] as well as the power to establish rates by contract,[12] may, in general, be delegated by the legislature to municipal corporations; but such delegation does not include the power to fix charges to the municipality itself,[13] nor does it include the power to confer on a public service corporation, for a fixed period, the right to charge a certain rate.[14] The legislature cannot, by statute, authorize a municipality to make a contract as to public utility rates which will prevent the State from fixing reasonable rates regardless of the contract.[15]

Footnotes

1 Ky.—Hatcher v. Kentucky & West Virginia Power Co., 280 Ky. 583, 133 S.W.2d 910 (1939).
N.Y.—People ex rel. Lehigh Valley R. Co. v. State Tax Commission, 206 A.D. 549, 202 N.Y.S. 310 (3d Dep't 1923), aff'd, 240 N.Y. 591, 148 N.E. 718 (1925).
Perpetual franchise
Power to grant a perpetual franchise may be delegated to a municipality.
Del.—Eastern Shore Public Service Co. v. Town of Seaford, 23 Del. Ch. 199, 2 A.2d 265 (1938).

2 Fla.—State ex rel. Reynolds v. City of St. Petersburg, 133 Fla. 766, 183 So. 304, 118 A.L.R. 667 (1938).
Iowa—City of Ames v. Gerbracht, 194 Iowa 267, 189 N.W. 729 (1922).

3 N.J.—Ring v. Mayor and Council of Borough of North Arlington, 136 N.J.L. 494, 56 A.2d 744 (N.J. Sup. Ct. 1948), judgment aff'd, 1 N.J. 24, 61 A.2d 508 (1948).

4 N.Y.—Novak v. Town of Poughkeepsie, 63 Misc. 2d 385, 311 N.Y.S.2d 393 (Sup 1970).
W. Va.—Brackman's Inc., v. City of Huntington, 126 W. Va. 21, 27 S.E.2d 71 (1943).

5 Colo.—Kelly v. City of Fort Collins, 163 Colo. 520, 431 P.2d 785 (1967).
Fla.—Wednesday Night, Inc. v. City of Fort Lauderdale, 272 So. 2d 502 (Fla. 1972).
R.I.—Di Traglia v. Daneker, 83 R.I. 227, 115 A.2d 345 (1955).
Binding recommendations regarding licenses
Granting to local governing bodies the option to make binding recommendations concerning the approval or denial of alcoholic beverage licenses is an unconstitutional delegation of legislative power.
Neb.—Bosselman, Inc. v. State, 230 Neb. 471, 432 N.W.2d 226 (1988).
Hours of sale
A grant of power to a local board to establish the hours during which alcoholic beverages may be sold within its jurisdiction is constitutionally permissible.
N.Y.—Walsh v. Dominy, 53 A.D.2d 1063, 386 N.Y.S.2d 136 (4th Dep't 1976).
Vague standards
Because a statute establishing standards used by a local governing body in determining whether to grant a liquor license was unconstitutionally vague, it was also an unconstitutional delegation of legislative power.
Neb.—Kwik Shop, Inc. v. City of Lincoln, 243 Neb. 178, 498 N.W.2d 102 (1993).

6 Ill.—Clevenger v. City of East Moline, 44 Ill. App. 3d 168, 2 Ill. Dec. 552, 357 N.E.2d 719 (3d Dist. 1976).
Mont.—State v. Stark, 100 Mont. 365, 52 P.2d 890 (1935).
Va.—Flax v. City of Richmond, 189 Va. 273, 52 S.E.2d 250 (1949).

7 Ill.—People v. Yonker, 351 Ill. 139, 184 N.E. 228 (1932).
N.Y.—Seignious v. Rice, 273 N.Y. 44, 6 N.E.2d 91 (1936).
Wyo.—State ex rel. Lynch v. Board of County Com'rs, 75 Wyo. 435, 296 P.2d 986 (1956).

8 Colo.—Krupp v. Breckenridge Sanitation Dist., 1 P.3d 178 (Colo. App. 1999), aff'd, 19 P.3d 687 (Colo. 2001).
N.Y.—Village of Bronxville v. Maltbie, 284 N.Y. 206, 30 N.E.2d 475 (1940).

Or.—Portland Stages, Inc. v. City of Portland, 252 Or. 633, 450 P.2d 764 (1969).

9 Ky.—Settle v. Jones, 306 Ky. 9, 206 S.W.2d 59 (1947).

Neb.—Clough v. North Central Gas Co., 150 Neb. 418, 34 N.W.2d 862 (1948).

Ohio—State ex rel. Campbell v. Cincinnati St. Ry. Co., 97 Ohio St. 283, 119 N.E. 735 (1918).

10 Mich.—Traverse City v. Michigan Railroad Commission, 202 Mich. 575, 168 N.W. 481 (1918).

N.H.—State v. Guertin, 89 N.H. 126, 193 A. 237 (1937).

11 Fla.—Cooksey v. Utilities Commission, 261 So. 2d 129 (Fla. 1972).

Minn.—Western States Utilities Co. v. City of Waseca, 242 Minn. 302, 65 N.W.2d 255 (1954).

Tex.—Kousal v. Texas Power & Light Co., 142 Tex. 451, 179 S.W.2d 283 (1944).

Clear expression or necessary implication

In ascertaining whether the right to regulate rates has been conferred on a city, courts are governed by the rule that the delegation of the sovereign right to regulate rates must be clearly and unmistakably expressed or necessarily implied from powers expressly granted, and all doubts must be resolved against the city.

U.S.—Railroad Commission of California v. Los Angeles Ry. Corp., 280 U.S. 145, 50 S. Ct. 71, 74 L. Ed. 234 (1929).

Ky.—Southern Bell Tel. & Tel. Co. v. City of Louisville, 265 Ky. 286, 96 S.W.2d 695 (1936).

Minn.—Western States Utilities Co. v. City of Waseca, 242 Minn. 302, 65 N.W.2d 255 (1954).

12 U.S.—Railroad Commission of California v. Los Angeles Ry. Corp., 280 U.S. 145, 50 S. Ct. 71, 74 L. Ed. 234 (1929).

Ky.—Southern Bell Tel. & Tel. Co. v. City of Louisville, 265 Ky. 286, 96 S.W.2d 695 (1936).

Va.—City of Richmond v. Virginia Railway & Power Co., 141 Va. 69, 126 S.E. 353 (1925).

13 N.M.—Agua Pura Co. of Las Vegas v. Mayor, Etc., of City of Las Vegas, 1900-NMSC-002, 10 N.M. 6, 60 P. 208 (1900).

14 U.S.—Home Tel. & Tel. Co. v. City of Los Angeles, 211 U.S. 265, 29 S. Ct. 50, 53 L. Ed. 176 (1908).

15 Mo.—State ex rel. Kansas City Public Service Co. v. Latshaw, 325 Mo. 909, 30 S.W.2d 105 (1930).

End of Document

16 C.J.S. Constitutional Law § 373

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

B. Legislative Powers and Delegation Thereof

4. Delegation of Powers

e. Delegation to Local Authorities

(2) Delegations as to Particular Matters

§ 373. Parks and recreational matters

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2440

The legislature cannot delegate legislative powers to park commissioners, but it may confer authority to make regulations and to perform administrative duties.

The legislature may delegate to local governmental authorities discretion as to the time of development of park and recreational facilities.[1]

The legislature may delegate to park commissioners the power to make reasonable rules and regulations as to the use of the parks,[2] or for the use of the roadways under their care,[3] and may impose on such commissioners administrative duties generally[4] but not legislative powers.[5]

In some cases, statutes authorizing park commissioners to levy taxes for parks, boulevards, etc., under their care, subject to certain restrictions, have been ruled valid,[6] but a statute which purports to confer on park commissioners appointed by the city council, without the consent of the people, the power to levy general taxes has is invalid as a delegation of legislative power.[7] The vesting of commissioners with power to select sites for and to establish parks does not constitute an improper delegation of legislative power.[8]

Footnotes

1 Cal.—Associated Home Builders etc., Inc. v. City of Walnut Creek, 4 Cal. 3d 633, 94 Cal. Rptr. 630, 484 P.2d 606, 43 A.L.R.3d 847 (1971).

2 Ky.—Warley v. Board of Park Com'rs, 233 Ky. 688, 26 S.W.2d 554 (1930).

3 Mass.—Brodbine v. Inhabitants of Town of Revere, 182 Mass. 598, 66 N.E. 607 (1903).
N.Y.—People v. Stock, 88 Misc. 2d 1058, 390 N.Y.S.2d 367 (Dist. Ct. 1976).

4 Mich.—Turner v. City of Detroit, 104 Mich. 326, 62 N.W. 405 (1895).
Licensing authority without narrow standards
Ordinance which subjects the exercise of First Amendment activities to the unrestricted discretion of a park official constitutes an unconstitutional delegation of a licensing authority.
U.S.—Milwaukee Mobilization for Survival v. Milwaukee County Park Commission, 477 F. Supp. 1210 (E.D. Wis. 1979).

5 Mo.—Kansas City v. Ward, 134 Mo. 172, 35 S.W. 600 (1896).

6 Ind.—Brown v. Baltimore & O. & C. R. Co., 186 Ind. 81, 115 N.E. 86 (1917).
Kan.—Wulf v. Kansas City, 77 Kan. 358, 94 P. 207 (1908).

7 N.D.—Vallelly v. Board of Park Com'rs of Park Dist. of City of Grand Forks, 16 N.D. 25, 111 N.W. 615 (1907).

8 Iowa—Mathiasen v. State Conservation Commission, 246 Iowa 905, 70 N.W.2d 158 (1955).
Determination what part of legislatively selected site needed
Mass.—Everett v. Metropolitan Dist. Commission, 350 Mass. 575, 215 N.E.2d 763 (1966).
Eminent domain
Neb.—Duerfeldt v. State Game and Parks Commission, 184 Neb. 242, 166 N.W.2d 737 (1969).

16 C.J.S. Constitutional Law § 374

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

B. Legislative Powers and Delegation Thereof

4. Delegation of Powers

e. Delegation to Local Authorities

(2) Delegations as to Particular Matters

§ 374. Public offices and officers; local courts and judges

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2434 to 2438

The power of the legislature to create and to abolish municipal offices, and to define and change their powers and duties, along with the power to regulate public employment, may be delegated to political subdivisions of the State; however, the legislature may not delegate to municipal authorities the power to control the organization of local courts specially committed to the legislature.

While it would seem that the power of the legislature to create public offices generally cannot be delegated,[1] it has been ruled that the power of the legislature to create and to abolish municipal offices and to define and change their powers and duties may be delegated to municipalities,[2] as may also the power to determine the qualifications of elective officers,[3] and to determine the precise method of choosing officers in municipalities which have adopted a home-rule law.[4] The legislature may delegate part of its power to regulate public employment with respect to tenure and retirement to political subdivisions of the State.[5]

Where a statute provides for the unconditional creation of a county office, it may leave to the county authorities the decision as to when the local conditions show the actual need for putting the act into practical operation.[6] The legislature may delegate to a county board the power to appoint various county officers.[7] Where the legislature has constitutional power to make changes in the constitution as to county government, it may provide that the boards of certain counties may abolish the office of county treasurer and appoint banks to perform his or her duties.[8] A statute establishing a county-wide civil service system, which delegates to a citizens' supervisory commission the power to appoint a personnel board, has been determined a delegation of administrative power and valid,[9] as has a statute empowering a civil service commission to determine the qualifications of officers.[10]

Fixing compensation.

The legislature may delegate to the governing body of a municipality the power to fix[11] or change[12] the compensation of municipal officers or employees and to provide for, and arrange the payment of, pensions.[13] Thus, unless otherwise provided by the constitution, town authorities may be given the power to fix the salary of town or township officials[14] although they cannot be given arbitrary power to fix such compensation in violation of, or disregard of, constitutional provisions.[15]

The fixing of salaries of county, township, and other local officers may be delegated to the boards of county commissioners, within certain limits,[16] except where such delegation is in direct conflict with constitutional provisions.[17] However, the method of fixing the compensation of a state officer cannot be delegated to county authorities.[18] Moreover, the delegation of authority to fix the compensation of county officers must be accompanied by the statement of some rule or policy that will give limitation and direction to the exercise of the authority.[19]

Local courts and judges.

The legislature may not delegate to municipal authorities the power to control the organization of local courts specially committed to the legislature.[20] Similarly, the legislature may not constitutionally delegate to counties authority to determine the number of magistrates they wish to fund.[21] On the other hand, it has been ruled that the legislature may delegate authority to determine the need for establishing such courts,[22] as well as the power to add new departments to a municipal court,[23] and a statute authorizing a city council to determine the amount of costs to be paid by litigants in a municipal court was determined to be not an invalid delegation of legislative power.[24] The legislature may delegate its authority to establish judicial salaries to county governments.[25]

Footnotes

1 Mo.—State ex rel. Field v. Smith, 329 Mo. 1019, 49 S.W.2d 74 (1932).

2 Fla.—City of Jacksonville v. Bowden, 67 Fla. 181, 64 So. 769 (1914).
Mass.—Nichols v. Commissioner of Public Welfare, 311 Mass. 125, 40 N.E.2d 275 (1942).
Pa.—Pennsylvania State Ass'n of Jury Com'rs v. Com., 621 Pa. 360, 78 A.3d 1020 (2013).
Impeachment of municipal officers
Pa.—In re Marshall, 363 Pa. 326, 69 A.2d 619 (1949).

3 Mich.—Coxe v. Carson, 194 Mich. 304, 160 N.W. 534 (1916).
Tenn.—Bailey v. County of Shelby, 188 S.W.3d 539 (Tenn. 2006).

4 N.Y.—Bareham v. City of Rochester, 246 N.Y. 140, 158 N.E. 51 (1927).

5 Nev.—City of Reno v. Saibini, 83 Nev. 315, 429 P.2d 559 (1967).

6 Cal.—Brown v. Overshiner, 38 Cal. 2d 432, 240 P.2d 617 (1952).
Mo.—State on Inf. of Wallach v. Loesch, 350 Mo. 989, 169 S.W.2d 675 (1943).
N.Y.—La Rocca v. Flynn, 257 N.Y. 5, 177 N.E. 290 (1931).

Consolidation of offices

Cal.—Brooks v. Stewart, 97 Cal. App. 2d 385, 218 P.2d 56 (4th Dist. 1950).
Mo.—State ex inf. Crain ex rel. Peebles v. Moore, 339 Mo. 492, 99 S.W.2d 17 (1936).

7 Cal.—Ogle v. Eckel, 49 Cal. App. 2d 599, 122 P.2d 67 (4th Dist. 1942).
Mich.—Matthews v. Montgomery, 275 Mich. 141, 266 N.W. 300 (1936).

8 N.C.—Tyrrell County v. Holloway, 182 N.C. 64, 108 S.E. 337 (1921).

9 Ala.—Yeilding v. State ex rel. Wilkinson, 232 Ala. 292, 167 So. 580 (1936).

10 Cal.—Cornell v. Harris, 15 Cal. App. 2d 763, 59 P.2d 575 (4th Dist. 1936).

11 Cal.—Slavich v. Walsh, 82 Cal. App. 2d 228, 186 P.2d 35 (1st Dist. 1947).
Ind.—Colen v. Ohio County, 890 N.E.2d 1 (Ind. Ct. App. 2008).
Mass.—Quinlan v. City of Cambridge, 320 Mass. 124, 68 N.E.2d 11 (1946).
Wyo.—May v. City of Laramie, 58 Wyo. 240, 131 P.2d 300 (1942).

County officers

Municipal corporations may be authorized to fix salaries of certain county officers whose duties are performed within such corporations.

Cal.—Scott v. Boyle, 164 Cal. 321, 128 P. 941 (1912).

12 Md.—Gould v. City of Baltimore, 120 Md. 534, 87 A. 818 (1913).

13 Fla.—Voorhees v. City of Miami, 145 Fla. 402, 199 So. 313 (1940).
Ohio—Thompson v. City of Marion, 134 Ohio St. 122, 11 Ohio Op. 549, 16 N.E.2d 208 (1938).

Vote by firemen

A statutory provision authorizing firemen to vote as to whether terminated firemen with less than 20 years of service should be entitled to a refund of payments to their pension fund was not an unlawful delegation of legislative power.

Tex.—Creps v. Board of Firemen's Relief and Retirement Fund Trustees of Amarillo, 456 S.W.2d 434 (Tex. Civ. App. Amarillo 1970), writ refused n.r.e., (Oct. 7, 1970).

14 Ind.—Benton County Council of Benton County v. State ex rel. Sparks, 224 Ind. 114, 65 N.E.2d 116 (1946).
N.Y.—Andrews v. Pierson, 174 A.D. 478, 160 N.Y.S. 542 (2d Dep't 1916).

15 Ill.—People, for Use of Geneseo Tp., v. Vickroy, 266 Ill. 384, 107 N.E. 638 (1914).

16 Ga.—Gainer v. Ellis, 226 Ga. 79, 172 S.E.2d 608 (1970).
N.C.—Efird v. Board of Com'rs for Forsyth County, 219 N.C. 96, 12 S.E.2d 889 (1941).
Utah—Johnson v. Bankhead, 120 Utah 71, 232 P.2d 372 (1951).
Wis.—Dandoy v. Milwaukee County, 214 Wis. 586, 254 N.W. 98 (1934).

17 Fla.—Musleh v. Marion County, 200 So. 2d 168 (Fla. 1967).
Pa.—In re Benson, 350 Pa. 141, 38 A.2d 75 (1944).
Tenn.—Chambers v. Marcum, 195 Tenn. 1, 255 S.W.2d 1 (1953).

18 Ga.—Mosley v. Garrett, 182 Ga. 810, 187 S.E. 20 (1936).
S.C.—Kramer v. County Council for Dorchester County, 277 S.C. 71, 282 S.E.2d 850 (1981).

19 N.J.—Delmar v. Bergen County, 117 N.J.L. 377, 189 A. 75 (N.J. Ct. Err. & App. 1937).

20 Ohio—State ex rel. Bell v. Miller, 17 Ohio App. 309, 1923 WL 2414 (1st Dist. Hamilton County 1923).
Tenn.—State ex rel. Haywood v. Superintendent, Davidson County Workhouse, 195 Tenn. 265, 259 S.W.2d 159 (1953) (overruled on other grounds by, Bankston v. State, 908 S.W.2d 194 (Tenn. 1995)).
Tex.—De Silvia v. State, 88 Tex. Crim. 634, 229 S.W. 542 (1921).
Utah—State v. Barker, 50 Utah 189, 167 P. 262 (1917).

Delegation to county authorities

Mo.—In re City of Berkeley, 155 S.W.2d 138 (Mo. Ct. App. 1941).
N.J.—Bonnet v. State, 141 N.J. Super. 177, 357 A.2d 772 (Law Div. 1976), judgment aff'd, 155 N.J. Super. 520, 382 A.2d 1175 (App. Div. 1978), aff'd, 78 N.J. 325, 395 A.2d 194 (1978).
Tex.—Trawalter v. Schaefer, 142 Tex. 521, 179 S.W.2d 765 (1944).

21 S.C.—Davis v. County of Greenville, 322 S.C. 73, 470 S.E.2d 94 (1996).

22 Kan.—Brown v. Arkansas City, 135 Kan. 453, 11 P.2d 607 (1932).

23 Wash.—Application of Eng, 113 Wash. 2d 178, 776 P.2d 1336 (1989).

24 Ill.—People ex rel. Soble v. Gill, 358 Ill. 261, 193 N.E. 192 (1934).

25 Ind.—Tipton County ex rel. Tipton County Council v. State ex rel. Nash, 731 N.E.2d 12 (Ind. Ct. App. 2000).

End of Document

16 C.J.S. Constitutional Law § 375

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

B. Legislative Powers and Delegation Thereof

4. Delegation of Powers

e. Delegation to Local Authorities

(2) Delegations as to Particular Matters

§ 375. Regulation of public and private property

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2435 to 2438

The legislature may delegate to political subdivisions various powers pertaining to the regulation of public and private property.

The legislature may delegate to political subdivisions power with reference to such matters as building and zoning regulation;[1] the care and protection of municipal property;[2] eminent domain;[3] housing and slum clearance, and the creation of commissions for such purpose;[4] the administration of rent controls;[5] the creation of parking facilities;[6] the leasing of public property to private individuals;[7] and advertising on private property.[8]

Footnotes

1 Ga.—Suddeth v. Forsyth County, 258 Ga. 773, 373 S.E.2d 746 (1988).
Me.—Inhabitants of Town of Boothbay Harbor v. Russell, 410 A.2d 554 (Me. 1980).
Md.—Prince George's County v. McBride, 268 Md. 522, 302 A.2d 620 (1973).
City board of adjustment
Tex.—Harrington v. Board of Adjustment of City of Alamo Heights, Bexar County, 124 S.W.2d 401 (Tex. Civ. App. Amarillo 1939), writ refused.
County authorities
Ga.—Kirkpatrick v. Candler, 205 Ga. 449, 53 S.E.2d 889 (1949).
La.—Paternostro v. Jefferson Parish, 289 So. 2d 327 (La. Ct. App. 4th Cir. 1973), writ refused, 293 So. 2d 183 (La. 1974).
Mich.—Davis v. Township Bd. of Imlay Tp., 7 Mich. App. 231, 151 N.W.2d 370 (1967).
Nonconforming uses
Mich.—Kopietz v. Zoning Bd. of Appeals for City of Village of Clarkston, 211 Mich. App. 666, 535 N.W.2d 910 (1995).
Standards required
Statute unconstitutionally gave town selectboards unbridled discretion to decide whether to review applications under old or new zoning bylaws, with no standards to limit the exercise of that discretion.
Vt.—In re Handy, 171 Vt. 336, 764 A.2d 1226 (2000).
Town boards
N.Y.—Green Point Sav. Bank v. Board of Zoning Appeals of Town of Hempstead, 281 N.Y. 534, 24 N.E.2d 319 (1939).
Ohio—Cook-Johnson Realty Co. v. Bertolini, 15 Ohio St. 2d 195, 44 Ohio Op. 2d 160, 239 N.E.2d 80 (1968).
Pa.—Vanport Tp. v. Brobeck, 22 Pa. Commw. 523, 349 A.2d 523 (1975).
Power to grant zoning variances
Ga.—Berkelbaugh v. Green, 258 Ga. 150, 366 S.E.2d 284 (1988), judgment aff'd, 377 S.E.2d 162 (Ga. 1989).
N.Y.—Hilton v. Board of Appeals of City of Geneva, 18 N.Y.S.2d 213 (Sup 1940).

2 Mont.—State ex rel. City of Missoula v. Holmes, 100 Mont. 256, 47 P.2d 624, 100 A.L.R. 581 (1935).

3 Kan.—State ex rel. Hawks v. City of Topeka, 176 Kan. 240, 270 P.2d 270 (1954).
N.Y.—6419 New Utrecht Realty Corp. v. New York City Transit Authority, 76 Misc. 2d 711, 351 N.Y.S.2d 589 (Sup 1974).

4 Mass.—Board of Appeals of Hanover v. Housing Appeals Committee in Dept. of Community Affairs, 363 Mass. 339, 294 N.E.2d 393 (1973).
N.J.—Dome Realty, Inc. v. City of Paterson, 83 N.J. 212, 416 A.2d 334, 20 A.L.R.4th 1219 (1980).
Okla.—Isaacs v. Oklahoma City, 1966 OK 267, 437 P.2d 229 (Okla. 1966).

5 Mass.—Chelmsford Trailer Park, Inc. v. Town of Chelmsford, 393 Mass. 186, 469 N.E.2d 1259 (1984).
N.J.—Inganamort v. Borough of Fort Lee, 62 N.J. 521, 303 A.2d 298 (1973).
N.Y.—Lincoln Plaza Associates v. Barbarisi, 60 Misc. 2d 905, 304 N.Y.S.2d 545 (N.Y. City Civ. Ct. 1969).
Decontrol of rents
N.Y.—Meyers v. New York State Division of Housing and Community Renewal, 36 A.D.2d 166, 319 N.Y.S.2d 522 (2d Dep't 1971).
Matters affecting local interests of town
Towns and township boards or committees may be authorized to administer the details of rent control legislation with respect to matters particularly affecting local interests.
Mass.—Marshal House, Inc. v. Rent Review and Grievance Bd. of Brookline, 357 Mass. 709, 260 N.E.2d 200 (1970).

6 Conn.—Barnes v. City of New Haven, 140 Conn. 8, 98 A.2d 523 (1953).
Neb.—Blackledge v. Richards, 194 Neb. 188, 231 N.W.2d 319 (1975).
W. Va.—State ex rel. City of Charleston v. Coghill, 156 W. Va. 877, 207 S.E.2d 113 (1973).

7 Pa.—Basehore v. Hampden Indus. Development Authority, 433 Pa. 40, 248 A.2d 212 (1968).

8 Mass.—Strazzulla v. Building Inspector of Wellesley, 357 Mass. 694, 260 N.E.2d 163 (1970).

End of Document

16 C.J.S. Constitutional Law § 376

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

B. Legislative Powers and Delegation Thereof

4. Delegation of Powers

e. Delegation to Local Authorities

(2) Delegations as to Particular Matters

§ 376. Streets, highways, and bridges

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2435 to 2438

The legislature may delegate to political subdivisions various powers pertaining to the construction and regulation of streets, highways, and bridges.

A state, having full authority and power over public highways, may delegate its power of control to local authorities to act for and represent it[1] and may confer on municipal authorities the power to establish, alter, and improve streets;[2] pass rules and ordinances with respect to streets and highways;[3] and construct and regulate bridges.[4]

Taxing districts.

The legislature may delegate to highway districts, or to bridge and highway districts, the power to levy taxes for the purposes of the districts[5] and may confer on special taxing districts created for that purpose the power to make special assessments for the construction and improvement of highways against the property specially benefited.[6]

Footnotes

1 Ala.—McPhillips v. Brodbeck, 289 Ala. 148, 266 So. 2d 592 (1972).
Iowa—Tott v. Sioux City, 261 Iowa 677, 155 N.W.2d 502 (1968).
Mass.—Com. v. Sargent, 330 Mass. 690, 117 N.E.2d 154 (1953).
Use of streets by public utilities
(1) A state, by legislative enactment, observing constitutional limitations, may grant cities the power to make use of streets for construction and maintenance of public utilities.
Ala.—Ex parte Ashworth, 204 Ala. 391, 86 So. 84 (1920).
(2) The legislature may delegate to municipalities the right to refuse consent to operate bus lines within their jurisdiction.
N.Y.—Dobosen v. Mescall, 205 A.D. 265, 199 N.Y.S. 800 (4th Dep't 1923).
Use of roads or streets by vehicles
Ky.—Ashland Transfer Co. v. State Tax Commission, 247 Ky. 144, 56 S.W.2d 691, 87 A.L.R. 534 (1932).
Vt.—State v. Douglas, 117 Vt. 484, 94 A.2d 403 (1953).
Va.—Town of Leesburg v. Tavenner, 196 Va. 80, 82 S.E.2d 597 (1954).
Parking meters
N.H.—Opinion of the Justices, 94 N.H. 501, 51 A.2d 836 (1947).
Scenic roads
Scenic road statute, which required landowners to obtain approval of municipal bodies before removing trees or stone walls along scenic roads, was an impermissible delegation of legislative power as the legislature deemed scenic roads to be a matter of local concern and had delegated the authority to designate scenic roads to local voters.
N.H.—Webster v. Town of Candia, 146 N.H. 430, 778 A.2d 402 (2001).
Vacation of streets
Wyo.—Clifford v. City of Cheyenne, 487 P.2d 1325 (Wyo. 1971).

2 Ala.—McPhillips v. Brodbeck, 289 Ala. 148, 266 So. 2d 592 (1972).
Md.—Maryland & P. R. Co. v. Nice, 185 Md. 429, 45 A.2d 109 (1945).
Mo.—City of St. Louis v. Franklin Bank, 351 Mo. 688, 173 S.W.2d 837 (1943).
Town may contract for road repair
Pa.—Petition of McKeown, 51 Pa. Super. 277, 1912 WL 4732 (1912), aff'd, 237 Pa. 626, 85 A. 1085 (1912).

3 Idaho—State v. Heitz, 72 Idaho 107, 238 P.2d 439 (1951).
Minn.—Town of Kinghurst v. International Lumber Co., 174 Minn. 305, 219 N.W. 172 (1928).
Tex.—Shell Oil Co. v. Jackson County, 193 S.W.2d 268 (Tex. Civ. App. Galveston 1945).

4 Ala.—Windham v. State, 16 Ala. App. 383, 77 So. 963 (1918).
W. Va.—State ex rel. Anderson v. Dailer, 140 W. Va. 513, 85 S.E.2d 656 (1955).
Bridge commission
Ky.—Rentz v. Campbell County, 260 Ky. 242, 84 S.W.2d 44 (1935).
S.D.—Mettet v. City of Yankton, 71 S.D. 435, 25 N.W.2d 460 (1946).
Grant of franchise for toll bridge
Fla.—Carlton, for Use of Franklin County v. Constitution Indem. Co., 117 Fla. 143, 157 So. 431 (1934).
Setting bridge tolls
Fla.—State v. Duval County, 76 Fla. 180, 79 So. 692 (1918).

5 Cal.—Doyle v. Jordan, 200 Cal. 170, 252 P. 577 (1926).
Delegation precluded
Tenn.—Smith v. Carter, 131 Tenn. 1, 173 S.W. 430 (1915).

6 Ark.—Missouri Pac. R. Co. v. Izard County Highway Imp. Dist. No. 1, 143 Ark. 261, 220 S.W. 452 (1920), dismissed on other grounds, 257 U.S. 623, 42 S. Ct. 269, 66 L. Ed. 402 (1922).

End of Document

16 C.J.S. Constitutional Law § 377

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

B. Legislative Powers and Delegation Thereof

4. Delegation of Powers

e. Delegation to Local Authorities

(2) Delegations as to Particular Matters

§ 377. Taxes and special assessments

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2434 to 2438

It is within the constitutional powers of the legislature in many jurisdictions to authorize the power of taxation for local purpose to be exercised by local authorities.

It is within the constitutional powers of the legislature in many jurisdictions to authorize the power of taxation for local purpose to be exercised by local authorities.[1] Except as prohibited by the constitution, the power to levy taxes, or to make special assessments, for local purposes,[2] such as the construction, improvement, etc., of streets and highways,[3] and the power to exempt particular property from taxation for local purposes,[4] may be delegated by the legislature to municipalities and their governmental boards or officers,[5] so long as they are not given excessive discretion in the matter.[6] Thus, the legislature may delegate to county authorities the power to levy taxes or special assessments for local purposes[7] and to exercise various administrative functions with respect to taxation generally,[8] such as the determination of facts on which the operation of a statute

depends,[9] the issuance of bonds,[10] the granting of exemptions,[11] the imposition of penalties,[12] and the waiver or reduction of penalties imposed.[13]

The legislature has the authority to empower a city to impose an indirect or excise tax,[14] as well as a tax on businesses and occupations.[15] The legislature may authorize a municipality to declare its taxes a lien on the property against which they are assessed[16] or to declare sanctioned assessments for public improvements a lien on adjacent property.[17]

On the other hand, the legislature cannot delegate to a body having no governmental function the authority to determine the amount to be raised by taxation.[18] Moreover, the legislature cannot delegate to county commissioners the legislative power to levy and collect an assessment against the State.[19]

Footnotes

1 La.—Board of Directors of Louisiana Recovery Dist. v. All Taxpayers, Property Owners, and Citizens of State of La., 529 So. 2d 384 (La. 1988).
S.D.—In re Oahe Conservancy Subdistrict, 85 S.D. 443, 185 N.W.2d 682 (1971).
Vt.—Stowe Citizens for Responsible Government v. State, 169 Vt. 559, 730 A.2d 573, 135 Ed. Law Rep. 193 (1999).
Wash.—Pierce County v. State, 159 Wash. 2d 16, 148 P.3d 1002 (2006).
Creation of special-purpose tax unit
Pa.—English v. Com., 845 A.2d 999 (Pa. Commw. Ct. 2004).

2 U.S.—Bradley v. City of Richmond, 227 U.S. 477, 33 S. Ct. 318, 57 L. Ed. 603 (1913).
Fla.—Belcher Oil Co. v. Dade County, 271 So. 2d 118 (Fla. 1972).
Ill.—People ex rel. Curren v. Wood, 391 Ill. 237, 62 N.E.2d 809, 161 A.L.R. 718 (1945).
What improvements are "local"
Whether an "improvement" is "local" within the meaning of a constitutional provision authorizing legislation empowering municipal corporations to finance such improvement by special assessment depends not on the character of improvement, nor the kind of service it is to render, but on whether benefits arising therefrom are special and local; and improvement of an existing municipal sewerage system by the construction of intercepting sewers, pumping stations, and a sewage treatment plant, was not a local improvement.
Ill.—City of Edwardsville v. Jenkins, 376 Ill. 327, 33 N.E.2d 598, 134 A.L.R. 891 (1941).

3 Kan.—Johnston v. City of Coffeyville, 175 Kan. 357, 264 P.2d 474 (1953).
Vt.—Village of Waterbury v. Melendy, 109 Vt. 441, 199 A. 236 (1938).

4 Mich.—Colonial Townhouse Co-op., Inc. v. City of Lansing, 25 Mich. App. 24, 181 N.W.2d 2 (1970).
N.Y.—Hermitage Co. v. Goldfogle, 204 A.D. 710, 199 N.Y.S. 382 (1st Dep't 1923), aff'd, 236 N.Y. 553, 142 N.E. 280 (1923) and aff'd, 236 N.Y. 554, 142 N.E. 281 (1923).

5 N.Y.—New York Steam Corporation v. City of New York, 268 N.Y. 137, 197 N.E. 172, 99 A.L.R. 1157 (1935).

6 Kan.—Von Ruden v. Miller, 231 Kan. 1, 642 P.2d 91 (1982).

7 Ala.—Yancey & Yancey Const. Co., Inc. v. DeKalb County Commission, 361 So. 2d 4 (Ala. 1978).
Nev.—City of Las Vegas v. Mack, 87 Nev. 105, 481 P.2d 396 (1971).
License fees on trades and occupations
Ky.—Second St. Properties, Inc. v. Fiscal Court of Jefferson County, 445 S.W.2d 709 (Ky. 1969).

8 Cal.—Los Angeles County v. Superior Court in and for Los Angeles County, 17 Cal. 2d 707, 112 P.2d 10 (1941).
Ind.—State ex rel. School City of South Bend v. Thompson, 211 Ind. 267, 6 N.E.2d 710 (1937).
Tex.—Harris County Flood Control Dist. v. Mann, 135 Tex. 239, 140 S.W.2d 1098 (1940).

9 Ala.—Dearborn v. Johnson, 234 Ala. 84, 173 So. 864 (1937).

10 S.C.—Parker v. Bates, 216 S.C. 52, 56 S.E.2d 723 (1949).

Wis.—State v. Johnson, 170 Wis. 218, 175 N.W. 589, 7 A.L.R. 1617 (1919).

Tax for payment of principal and interest on general obligation bonds

Ill.—In re Application for Judgment and Sale of Delinquent Properties for Tax Year 1989, 167 Ill. 2d 161, 212 Ill. Dec. 215, 656 N.E.2d 1049 (1995).

11 Kan.—State ex rel. Tomasic v. Kansas City, 237 Kan. 572, 701 P.2d 1314 (1985).

Miss.—Gully v. Wilmut Gas & Oil Co., 174 Miss. 794, 165 So. 620 (1936).

S.D.—South Dakota Ed. Ass'n v. Dromey, 85 S.D. 630, 188 N.W.2d 833 (1971).

Election of exemption

Legislation permitting the residents of a border city, separated from a counterpart in another state by street state lines, to elect to pay additional 1% sales tax, in exchange for an exemption from the state income tax, was not an impermissible delegation of state legislative and taxing authority to the city; the legislation addressed a local problem, was complete in itself, and primarily benefited the city.

Ark.—Boyd v. Weiss, 333 Ark. 684, 971 S.W.2d 237 (1998).

12 Ala.—Standard Oil Co. of Kentucky v. Limestone County, 220 Ala. 231, 124 So. 523 (1929).

13 Or.—Livesay v. De Armond, 131 Or. 563, 284 P. 166, 68 A.L.R. 422 (1930).

14 Or.—City of Coos Bay v. Aerie No. 538 of Fraternal Order of Eagles, 179 Or. 83, 170 P.2d 389 (1946).

15 W. Va.—Baldwin v. City of Martinsburg, 133 W. Va. 513, 56 S.E.2d 886 (1949).

16 Tenn.—City of South Fulton v. Edwards, 148 Tenn. 130, 251 S.W. 892 (1923).

17 Tenn.—City of South Fulton v. Edwards, 148 Tenn. 130, 251 S.W. 892 (1923).

18 N.J.—Van Cleve v. Passaic Valley Sewerage Com'rs, 71 N.J.L. 574, 60 A. 214 (N.J. Ct. Err. & App. 1905).

19 Ohio—State ex rel. Monger v. Board of Com'rs of Fairfield County, 119 Ohio St. 93, 6 Ohio L. Abs. 520, 162 N.E. 393 (1928).

End of Document

16 C.J.S. Constitutional Law § 378

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

§ 378. Water districts; drainage, irrigation, and sewage

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2434 to 2438

The legislature may delegate to municipalities or to local districts formed for such purposes various powers pertaining to the supply of water and to drainage, irrigation, and sewage.

The legislature may delegate to bodies politic created for the purpose the function of diverting water for the use of the people.[1]

Power granted by the legislature to the officers of a water district to fix a minimum wage for employees of contractors with the district is not unlawful as a delegation of legislative power,[2] and the same is true of the delegation to such officers of power to tax for the purposes of the district.[3] The delegation of power to a water commission which is not independent of and outside of the municipal authorities has been determined not to contravene a constitutional provision forbidding the delegation to a special commission of power to perform any municipal functions.[4]

The power to construct drains may be conferred on governmental subdivisions or on boards or commissioners elected or appointed for that purpose,[5] and the legislature may authorize the establishment of drainage districts[6] and confer on them powers incident to the purpose of their creation,[7] including the power to levy taxes,[8] or to perform ministerial duties in connection with a levy provided for by the statute creating the district,[9] and to make assessments for the cost of the improvement against the lands benefited.[10] A statute providing that the plan of reclamation of lands in a drainage district will be approved by an expert engineer does not delegate legislative power to the engineer.[11]

The legislature may also delegate to irrigation districts power necessary to carry out the purposes of the district.[12]

The power to regulate sewer districts, for purposes of preserving and promoting the public health and welfare, constitutes part of the state police power, which the State can validly dedicate to individual county boards.[13] A statute delegating to a governmental subdivision the power to install a sanitary sewer system financed by tax supported bonds was determined not to be an unconstitutional delegation of power.[14] Moreover, a statute authorizing municipalities to establish rates and the manner of collection of fees for the use of a storm sewer system is not an unconstitutional delegation of legislative power where considerable administrative detail is necessary in the fixing of rates.[15]

Footnotes

1 U.S.—City of Trenton v. State of New Jersey, 262 U.S. 182, 43 S. Ct. 534, 67 L. Ed. 937, 29 A.L.R. 1471 (1923).

2 Cal.—Metropolitan Water Dist. of Southern California v. Whitsett, 215 Cal. 400, 10 P.2d 751 (1932).

3 Cal.—Henshaw v. Foster, 176 Cal. 507, 169 P. 82 (1917).
Colo.—Gordon v. Wheatridge Water Dist., 107 Colo. 128, 109 P.2d 899 (1941).

4 Pa.—Commonwealth v. Krebs, 43 Pa. C.C. 425, 1915 WL 3624 (Pa. C.P. 1915).

5 Ind.—State ex rel. Mason v. Jacobs, 194 Ind. 327, 142 N.E. 715 (1924).
Kan.—Shoner v. Frisbie, 94 Kan. 220, 146 P. 419 (1915).
N.D.—Soliah v. Cormack, 17 N.D. 393, 117 N.W. 125 (1908), aff'd, 222 U.S. 522, 32 S. Ct. 103, 56 L. Ed. 294 (1912).

6 Kan.—Union Pac. R. Co. v. Board of Com'rs of Leavenworth County, 89 Kan. 72, 130 P. 855 (1913).
Ohio—Miami County v. City of Dayton, 92 Ohio St. 215, 110 N.E. 726 (1915).
Va.—Strawberry Hill Land Corp. v. Starbuck, 124 Va. 71, 97 S.E. 362 (1918).
Appointment or election of commissioners
N.C.—Northampton County Drainage Dist. Number One v. Bailey, 326 N.C. 742, 392 S.E.2d 352 (1990).

7 Minn.—In re Red Lake Drainage and Conservancy Dist., 154 Minn. 442, 192 N.W. 184 (1923).
Va.—Strawberry Hill Land Corp. v. Starbuck, 124 Va. 71, 97 S.E. 362 (1918).
Standards required
N.C.—Northampton County Drainage Dist. Number One v. Bailey, 326 N.C. 742, 392 S.E.2d 352 (1990).

8 Cal.—Mariposa County v. Merced Irr. Dist., 32 Cal. 2d 467, 196 P.2d 920 (1948).
Fla.—State v. Christiansen, 142 Fla. 537, 195 So. 153 (1940).
Kan.—Union Pac. R. Co. v. Board of Com'rs of Leavenworth County, 89 Kan. 72, 130 P. 855 (1913).
Power to tax held unconstitutional
Tenn.—Humphreys County ex rel. Cherry Bottom Drainage Dist. v. Burch, 179 Tenn. 562, 167 S.W.2d 992 (1943).

9 Wis.—Golden v. Green Bay Metropolitan Sewerage Dist., 210 Wis. 193, 246 N.W. 505 (1933).

10 Minn.—In re Red Lake Drainage and Conservancy Dist., 154 Minn. 442, 192 N.W. 184 (1923).
Mont.—In re Mossmain Drainage Dist., 90 Mont. 1, 300 P. 280 (1931).
Wash.—Foster v. Commissioners of Cowlitz County, 100 Wash. 502, 171 P. 539 (1918).

11 Mo.—Birmingham Drainage Dist. v. Chicago, M. & St. P. Ry. Co., 266 Mo. 60, 178 S.W. 893 (1915).

12 Ariz.—Maricopa County Municipal Water Conservation Dist. No. 1 v. La Prade, 45 Ariz. 61, 40 P.2d 94 (1935).

Contracting for federal loans

Ariz.—Maricopa County Municipal Water Conservation Dist. No. 1 v. La Prade, 45 Ariz. 61, 40 P.2d 94 (1935).

Replacement of dam

Idaho—Kerner v. Johnson, 99 Idaho 433, 583 P.2d 360 (1978).

13 Ohio—Board of County Com'rs of Delaware County v. City of Columbus, 26 Ohio St. 3d 179, 497 N.E.2d 1112 (1986).

14 Tex.—Parker v. San Jacinto County Water Control and Imp. Dist. No. 1, 154 Tex. 15, 273 S.W.2d 586 (1954).

Va.—Farquhar v. Board of Sup'rs of Fairfax County, 196 Va. 54, 82 S.E.2d 577 (1954).

Sewer charges

R.I.—Newport Court Club Associates v. Town Council of the Town of Middletown, 800 A.2d 405 (R.I. 2002).

Sewer extension

Me.—Ogunquit Sewer Dist. v. Town of Ogunquit, 1997 ME 33, 691 A.2d 654 (Me. 1997).

15 Mont.—City of Billings v. Nore, 148 Mont. 96, 417 P.2d 458 (1966).

End of Document

16 C.J.S. Constitutional Law § 379

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

§ 379. Other matters

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2434 to 2440

The legislature may delegate to local governmental bodies authority to regulate in a wide range of areas related to local self-government and the public health and welfare.

The legislature may delegate to local governmental authorities authority to regulate in a wide range of areas related to local self-government and the public health and welfare.[1] It may also delegate various other powers pertaining to local self-government[2] and the public health and welfare.[3]

County farm bureaus.

A statute recognizing and aiding county farm bureaus is not void as a delegation of legislative power to an unauthorized body.[4]

Elections and voting.

The legislature may delegate power with reference to elections and the right of suffrage;[5] however, there is authority that a statute purporting to delegate to municipalities the power to prescribe nonpartisan local elections, to fix the time of such elections, and to fix the requirements for candidates, or purporting to delegate any other power essential to the conduct and control of municipal elections, would constitute an unconstitutional delegation of power vested in the general assembly.[6]

Human rights.

The legislature has power to confer on a municipality the right to enact an ordinance establishing and granting certain powers to a human rights commission.[7]

Judicial matters.

The legislature may delegate to municipal corporations power with reference to the administration of justice[8] and procedural jurisdiction in matrimonial actions.[9]

Levees and navigable waters; shellfishing.

The legislature may delegate to appropriate local governmental bodies authority to pass rules and ordinances with respect to levees[10] and navigable waters.[11] Towns and township boards or committees may be authorized to open a channel and regulate shell fisheries therein.[12]

Stadium districts.

A stadium district, authorized to obligate the State for expenditures, was not clothed with an improper delegation of power.[13]

Footnotes

1 N.Y.—Delgado v. Delgado, 70 Misc. 2d 427, 333 N.Y.S.2d 112 (Sup 1972).

2 U.S.—City of Trenton v. State of New Jersey, 262 U.S. 182, 43 S. Ct. 534, 67 L. Ed. 937, 29 A.L.R. 1471 (1923).
Ala.—Opinion of the Justices, 254 Ala. 506, 49 So. 2d 175 (1950).
Minn.—State v. Lloyd A. Fry Roofing Co., 310 Minn. 535, 246 N.W.2d 692 (1976).

3 Conn.—Bottone v. Town of Westport, 209 Conn. 652, 553 A.2d 576 (1989).
Ill.—Franciscan Hospital v. Town of Canoe Creek, 79 Ill. App. 3d 490, 34 Ill. Dec. 738, 398 N.E.2d 413 (3d Dist. 1979).
N.C.—Adams v. North Carolina Dept. of Natural and Economic Resources, 295 N.C. 683, 249 S.E.2d 402 (1978).
Express trust furthering public function
The legislature may permissibly delegate the creation of an express trust in realty or personalty to provide funds to further a public function and allow a governmental subdivision to be a beneficiary thereof.
Nev.—State ex rel. Brennan v. Bowman, 88 Nev. 582, 503 P.2d 454 (1972).

4 Neb.—State v. Miller, 104 Neb. 838, 178 N.W. 846 (1920).

5 Fla.—City of Winter Haven v. State ex rel. Landis, 125 Fla. 392, 170 So. 100 (1936).

Mo.—Kansas City v. J. I. Case Threshing Mach. Co., 337 Mo. 913, 87 S.W.2d 195 (1935).
R.I.—Opinion to the Senate, 81 R.I. 254, 102 A.2d 118 (1954).

6 R.I.—Opinion to the Senate, 81 R.I. 254, 102 A.2d 118 (1954).

7 Mass.—Bloom v. City of Worcester, 363 Mass. 136, 293 N.E.2d 268 (1973).

8 Mo.—Kansas City v. J. I. Case Threshing Mach. Co., 337 Mo. 913, 87 S.W.2d 195 (1935).
As to the creation of courts, see § 374.

9 N.Y.—Delgado v. Delgado, 70 Misc. 2d 427, 333 N.Y.S.2d 112 (Sup 1972).

10 La.—Parish of St. John the Baptist v. Shexnaydre, 34 La. Ann. 850, 1882 WL 8925 (1882).

11 Fla.—Game and Fresh Water Fish Commission v. Lake Islands, Ltd., 407 So. 2d 189 (Fla. 1981).
Minn.—Nelson v. De Long, 213 Minn. 425, 7 N.W.2d 342 (1942).
Wis.—Wisconsin's Environmental Decade, Inc. v. Department of Natural Resources, 85 Wis. 2d 518, 271 N.W.2d 69 (1978).

12 R.I.—State v. Nelson, 31 R.I. 264, 77 A. 170 (1910).
Regulation of digging shellfish
Me.—State v. Boynton, 379 A.2d 994 (Me. 1977).

13 La.—Watermeier v. Louisiana Stadium and Exposition Dist., 235 So. 2d 114 (La. Ct. App. 4th Cir. 1970), writ refused, 256 La. 245, 236 So. 2d 28 (1970).
Determining location of stadium
Wash.—King County v. Taxpayers of King County, 133 Wash. 2d 584, 949 P.2d 1260 (1997).
Permission of sale of items legally sold in adjoining towns
Ark.—Lockwood v. State, 249 Ark. 941, 462 S.W.2d 465 (1971).
Restricted delegation of power
It would not be constitutionally competent for a general court to provide that any town that had adopted a town manager form of government could make amendments in such form of government without enabling legislation being enacted by the general court.
Mass.—Opinion of the Justices, 328 Mass. 674, 105 N.E.2d 565 (1952).

End of Document

16 C.J.S. Constitutional Law I IV C Refs.

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2450 to 2459, 2470, 2472 to 2476, 2478 to 2483, 2485 to 2498, 2500 to 2529, 2531 to 2533, 2540 to 2564, 2570 to 2574, 2580 to 2593, 2600 to 2609

A.L.R. Library

A.L.R. Index, Constitutional Law
West's A.L.R. Digest, Constitutional Law 2450 to 2459, 2470, 2472 to 2476, 2478 to 2483, 2485 to 2498, 2500 to 2529, 2531 to 2533, 2540 to 2564, 2570 to 2574, 2580 to 2593, 2600 to 2609

End of Document

16 C.J.S. Constitutional Law § 380

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

1. In General

§ 380. Judicial power, generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2450 to 2459

The term "judicial power" as employed to designate one of the three great branches or departments into which the powers of government are divided may be broadly defined as the power to hear and determine those matters which affect life, liberty, or property, and the judiciary, or judicial department of the government, as that branch thereof which is intended to interpret, construe, and apply the law.

The term "judicial power," as employed in a constitution, typically is used to designate the powers of one of the three great branches or departments into which the powers of government are divided and by which its affairs are to be administered.[1] Judicial power is conferred upon the courts by the state constitution.[2] The courts possess the entire body of the intrinsic judicial power of a state, and the other departments are prohibited from assuming to exercise any part of that judicial power.[3]

The judiciary or judicial department is an independent and equal coordinate branch of government.[4] It is an imperative duty of the judicial department of government to protect its jurisdiction at the boundaries of power fixed by the state constitution.[5]

Under a state constitutional system, the highest court of a state generally decides the scope of its own power and authority.[6] However, that which is prohibited by the constitution cannot be granted by the judiciary.[7]

Footnotes

1 Iowa—Hutchins v. City of Des Moines, 176 Iowa 189, 157 N.W. 881 (1916).
As to the effect of the separation-of-powers doctrine in determining the nature and scope of the powers of governmental departments, see § 384.
Sovereignty
Judicial power is an aspect of sovereignty.
Cal.—River Farms, Inc. v. Superior Court of San Bernardino County, 252 Cal. App. 2d 604, 60 Cal. Rptr. 665 (4th Dist. 1967).

2 Cal.—McClung v. Employment Development Dept., 34 Cal. 4th 467, 20 Cal. Rptr. 3d 428, 99 P.3d 1015 (2004).
Express and implied power conferred by constitution
A state constitution confers on the highest court of the state, both expressly and by necessary implication, the power to protect the integrity of the Judicial Branch of government and the duty to regulate the political activities of all judicial officers.
W. Va.—State ex rel. Carenbauer v. Hechler, 208 W. Va. 584, 542 S.E.2d 405 (2000).

3 Ind.—State v. Monfort, 723 N.E.2d 407 (Ind. 2000).
As to inherent powers of the courts, see § 387.
Adjudicatory and administrative functions
The functions of the state supreme court, in the exercise of its judicial power, include both adjudicatory functions and administrative functions.
La.—In re Bar Exam Class Action, 752 So. 2d 159 (La. 2000).

4 Ga.—Fortson v. Weeks, 232 Ga. 472, 208 S.E.2d 68 (1974).
Me.—District Court for Dist. IX v. Williams, 268 A.2d 812 (Me. 1970).
N.M.—Mowrer v. Rusk, 1980-NMSC-113, 95 N.M. 48, 618 P.2d 886 (1980).

5 Neb.—State ex rel. Shepherd v. Nebraska Equal Opportunity Com'n, 251 Neb. 517, 557 N.W.2d 684 (1997).
As to encroachment by the legislature on powers of the judiciary, generally, see § 284.

6 N.Y.—New York State Ass'n of Criminal Defense Lawyers v. Kaye, 95 N.Y.2d 556, 721 N.Y.S.2d 588, 744 N.E.2d 123 (2000).

7 Okla.—Cruse v. State, 2003 OK CR 8, 67 P.3d 920 (Okla. Crim. App. 2003).

16 C.J.S. Constitutional Law § 381

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

§ 381. Primary functions

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2450 to 2459

The primary functions of the judiciary include declaring what the law is, determining the rights of parties conformably thereto, and deciding and pronouncing a judgment and carrying it into effect.

In accordance with the very definition of the judiciary or judicial department as the one that interprets, construes, declares, and applies the law, the primary functions of the judiciary are to declare what the law is[1] and to determine the rights of parties conformably thereto.[2] The power of the judiciary is the power to declare finally the rights of the parties, in a particular case or controversy, based on the law at the time the judgment becomes final.[3] The courts have the power to decide and pronounce a judgment and carry it into effect,[4] and the power to hear and determine those matters which affect the life, liberty, or property of the citizens of the state.[5] A judicial inquiry investigates, declares, and enforces liabilities as they stand on present or past facts and under laws supposed already to exist.[6]

Administration of justice.

The courts have primary responsibility for the orderly administration of justice,[7] and the protection and enforcement of constitutional rights[8] rest ultimately with the courts. More specifically, the judicial function of declaring what the law is requires that constitutional provisions including the Bill of Rights be given full force and effect.[9] The courts also have the power to enforce laws[10] and share in the responsibility for law enforcement.[11]

CUMULATIVE SUPPLEMENT

Cases:

It is emphatically the province and duty of the judicial department to say what the law is. Rucho v. Common Cause, 139 S. Ct. 2484 (2019).

Article III of the Constitution establishes an independent Judiciary, a Third Branch of Government with the province and duty to say what the law is in particular cases and controversies. U.S.C.A. Const. Art. 3, § 1 et seq. Bank Markazi v. Peterson, 136 S. Ct. 1310 (2016).

In fulfilling duty to say what the law is, Supreme Court is not limited to a choice between the parties competing positions; Court must get the law right, even if in so doing it establishes a standard that differs from either of the approaches presented in the briefing on appeal. McDonald v. Fidelity & Deposit Company of Maryland, 373 N.C. 578, 2020 UT 11, 462 P.3d 343 (Utah 2020).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—GPX Intern. Tire Corp. v. U.S., 893 F. Supp. 2d 1296 (Ct. Int'l Trade 2013); U.S. v. Nixon, 418 U.S. 683, 94 S. Ct. 3090, 41 L. Ed. 2d 1039 (1974); In re KBR, Inc., Burn Pit Litigation, 744 F.3d 326 (4th Cir. 2014), cert. denied, 135 S. Ct. 1153, 190 L. Ed. 2d 911 (2015).
Ala.—Ex parte Christopher, 145 So. 3d 60 (Ala. 2013).
Ariz.—Yes on Prop 200 v. Napolitano, 215 Ariz. 458, 160 P.3d 1216 (Ct. App. Div. 1 2007).
Cal.—State Bldg. and Const. Trades Council of Cal., AFL-CIO v. City of Vista, 54 Cal. 4th 547, 143 Cal. Rptr. 3d 529, 279 P.3d 1022 (2012).
Ga.—Judicial Council of Georgia v. Brown & Gallo, LLC, 288 Ga. 294, 702 S.E.2d 894 (2010).
Va.—Moore v. Brown, 63 Va. App. 375, 758 S.E.2d 68 (2014).
Wash.—In re Estate of Hambleton, 181 Wash. 2d 802, 335 P.3d 398 (2014).
As to particular powers within the scope of the judiciary, see § 388.
Limitation on power
The state constitutional provision placing limitations on the liberty of conscience protected by the state constitution is a limitation on the judiciary's authority to "say what the law is" but does not limit the legislature's authority to enact statutes that provide greater protections to individual liberty of conscience than those provided in the constitution.
Ariz.—Planned Parenthood Arizona, Inc. v. American Ass'n of Pro-Life Obstetricians & Gynecologists, 227 Ariz. 262, 257 P.3d 181 (Ct. App. Div. 1 2011).

2 Cal.—People v. Cimarusti, 81 Cal. App. 3d 314, 146 Cal. Rptr. 421 (4th Dist. 1978).
Ill.—Roth v. Yackley, 77 Ill. 2d 423, 33 Ill. Dec. 131, 396 N.E.2d 520 (1979).

3 Ala.—City of Montgomery v. Town of Pike Road, 35 So. 3d 575 (Ala. 2009).
Exclusive powers

Exclusive powers of the judiciary include the ability to render judgments and conduct judicial review.

Mo.—State ex rel. Hilburn v. Staeden, 91 S.W.3d 607 (Mo. 2002).

As to particular powers within or without the scope of the judiciary, see §§ 388, 389.

Final arbiters

The state courts are the final arbiters of the state's own law.

Haw.—AlohaCare v. Department of Human Services, 127 Haw. 76, 276 P.3d 645 (2012), as corrected, (May 18, 2012).

4 Nev.—Galloway v. Truesdell, 83 Nev. 13, 422 P.2d 237 (1967).

N.J.—Suchit v. Baxt, 176 N.J. Super. 407, 423 A.2d 670 (Law Div. 1980).

N.C.—State v. Furmage, 250 N.C. 616, 109 S.E.2d 563 (1959).

Quintessential function

The entry of a judgment remains the quintessential function of a court.

Mo.—State ex rel. Hilburn v. Staeden, 91 S.W.3d 607 (Mo. 2002).

5 U.S.—Sullivan v. State of Sao Paulo, 122 F.2d 355 (C.C.A. 2d Cir. 1941).

6 U.S.—In re Federal Water & Gas Corp., 188 F.2d 100 (3d Cir. 1951).

Kan.—Behrmann v. Public Emp. Relations Bd., 225 Kan. 435, 591 P.2d 173 (1979).

7 U.S.—U.S. v. Hastings, 447 F. Supp. 534 (E.D. Ark. 1977).

Ill.—In re Appointment of Special State's Attorneys, 42 Ill. App. 3d 176, 1 Ill. Dec. 195, 356 N.E.2d 195 (3d Dist. 1976).

8 U.S.—Davis v. Passman, 442 U.S. 228, 99 S. Ct. 2264, 60 L. Ed. 2d 846 (1979).

Ill.—In re Appointment of Special State's Attorneys, 42 Ill. App. 3d 176, 1 Ill. Dec. 195, 356 N.E.2d 195 (3d Dist. 1976).

N.J.—Lloyd v. Borough of Stone Harbor, 179 N.J. Super. 496, 432 A.2d 572 (Ch. Div. 1981).

9 U.S.—Hansberry v. Lee, 311 U.S. 32, 61 S. Ct. 115, 85 L. Ed. 22, 132 A.L.R. 741 (1940).

N.J.—Lloyd v. Borough of Stone Harbor, 179 N.J. Super. 496, 432 A.2d 572 (Ch. Div. 1981).

Interpretation of Fourteenth Amendment

The ultimate interpretation and determination of the Fourteenth Amendment's substantive meaning is the province of the Judicial Branch.

U.S.—Kimel v. Florida Bd. of Regents, 528 U.S. 62, 120 S. Ct. 631, 145 L. Ed. 2d 522, 140 Ed. Law Rep. 825, 187 A.L.R. Fed. 543 (2000).

10 U.S.—Quinn v. U.S., 349 U.S. 155, 75 S. Ct. 668, 99 L. Ed. 964, 51 A.L.R.2d 1157 (1955).

Cal.—City and County of San Francisco v. Superior Court, 57 Cal. App. 3d 44, 128 Cal. Rptr. 712 (1st Dist. 1976).

Fla.—Griffin v. Stonewall Ins. Co., 346 So. 2d 97 (Fla. 3d DCA 1977).

11 N.J.—State v. De Stasio, 49 N.J. 247, 229 A.2d 636 (1967).

End of Document

16 C.J.S. Constitutional Law § 382

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

1. In General

§ 382. Primary functions—Construction of constitutional and statutory provisions

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2450 to 2459

The judiciary has the ultimate authority to construe a constitution's meaning and to interpret a statute.

It is the duty of the judiciary to construe constitutional and statutory provisions and other laws.[1] Only the Judicial Branch holds the ultimate authority to construe a constitution's meaning.[2] Likewise, the ultimate interpretation of a statute is an exercise of judicial power which cannot, in the absence of a constitutional provision, be conferred upon any other body.[3] It is the province and duty of the judicial department to say what the law is and to determine the constitutionality of statutes,[4] to apply the applicable statutes to particular cases,[5] and to apply the law's remedies and penalties in particular cases.[6]

Footnotes

1 U.S.—Propper v. Clark, 337 U.S. 472, 69 S. Ct. 1333, 93 L. Ed. 1480 (1949).
Ariz.—Forty-Seventh Legislature of State v. Napolitano, 213 Ariz. 482, 143 P.3d 1023 (2006).

Cal.—California School Boards Assn. v. State, 192 Cal. App. 4th 770, 121 Cal. Rptr. 3d 696, 265 Ed. Law Rep. 347 (4th Dist. 2011).
Conn.—State v. Wade, 297 Conn. 262, 998 A.2d 1114 (2010).
Ill.—Illinois County Treasurers' Ass'n v. Hamer, 381 Ill. Dec. 22, 9 N.E.3d 1141 (App. Ct. 4th Dist. 2014), appeal denied, 386 Ill. Dec. 476, 20 N.E.3d 1254 (Ill. 2014).
N.H.—In re Opinion Of Justices, 162 N.H. 160, 27 A.3d 859 (2011).
Ohio—East Ohio Gas Co. v. Walker, 59 Ohio App. 2d 216, 13 Ohio Op. 3d 234, 394 N.E.2d 348 (8th Dist. Cuyahoga County 1978).
Or.—Haugen v. Kitzhaber, 353 Or. 715, 306 P.3d 592 (2013), cert. denied, 134 S. Ct. 1009, 187 L. Ed. 2d 856 (2014).
S.C.—Mims Amusement Co. v. South Carolina Law Enforcement Div., 366 S.C. 141, 621 S.E.2d 344 (2005).
Wash.—Seattle School Dist. No. 1 of King County v. State, 90 Wash. 2d 476, 585 P.2d 71 (1978).
Wis.—Schilling v. State Crime Victims Rights Bd., 2005 WI 17, 278 Wis. 2d 216, 692 N.W.2d 623 (2005).

Separation-of-powers case

Constitutional separation of powers can serve to safeguard individual liberty, and it is the duty of the judicial department, in a separation-of-powers case as in any other, to say what the law is, but it is equally true that the longstanding practice of the government can inform the judicial department's determination of what the law is.

U.S.—N.L.R.B. v. Noel Canning, 134 S. Ct. 2550, 189 L. Ed. 2d 538 (2014).

2 U.S.—U.S. E.E.O.C. v. Court of Common Pleas of Allegheny County, Fifth Judicial Dist. of Pennsylvania, 124 Fair Empl. Prac. Cas. (BNA) 1642, 2014 WL 5243500 (W.D. Pa. 2014).
Colo.—Washington County Bd. of Equalization v. Petron Development Co., 109 P.3d 146 (Colo. 2005).
Ga.—Gwinnett County School Dist. v. Cox, 289 Ga. 265, 710 S.E.2d 773, 268 Ed. Law Rep. 983 (2011).
Haw.—Nelson v. Hawaiian Homes Com'n, 127 Haw. 185, 277 P.3d 279 (2012).
Iowa—King v. State, 818 N.W.2d 1, 283 Ed. Law Rep. 390 (Iowa 2012).
Kan.—Gannon v. State, 298 Kan. 1107, 319 P.3d 1196, 302 Ed. Law Rep. 377 (2014).
Minn.—Schowalter v. State, 822 N.W.2d 292 (Minn. 2012).
Neb.—City of Omaha v. City of Elkhorn, 276 Neb. 70, 752 N.W.2d 137 (2008).
Pa.—Stilp v. Com., 588 Pa. 539, 905 A.2d 918 (2006).
Wash.—Washington Off Highway Vehicle Alliance v. State, 176 Wash. 2d 225, 290 P.3d 954 (2012).

Role cannot be shared

The judiciary's role as the ultimate interpreter of the Constitution requires that courts ensure that the Constitution's structural safeguards are preserved, and it is a role that cannot be shared with the other branches any more than the President can share his veto power or Congress can share its power to override vetoes.

U.S.—N.L.R.B. v. New Vista Nursing and Rehabilitation, 719 F.3d 203 (3d Cir. 2013), reh'g granted, (Aug. 11, 2014).

3 Ariz.—Mayer v. Good Samaritan Hospital, 14 Ariz. App. 248, 482 P.2d 497 (Div. 1 1971).
Cal.—Superior Strut & Hanger Co. v. Port of Oakland, 72 Cal. App. 3d 987, 140 Cal. Rptr. 515 (1st Dist. 1977).
Ind.—Sun Life Assur. Co. of Canada v. Indiana Dept. of Ins., 868 N.E.2d 50 (Ind. Ct. App. 2007).
Iowa—Teamsters Local Union No. 421 v. City of Dubuque, 706 N.W.2d 709 (Iowa 2005).
Mo.—State ex rel. Praxair, Inc. v. Missouri Public Service Com'n, 344 S.W.3d 178 (Mo. 2011).
Tex.—Laney v. State, 223 S.W.3d 656 (Tex. App. Tyler 2007).

Ultimate authority

The state supreme court has the ultimate authority to say what a statute means.

Wash.—State v. Wentz, 149 Wash. 2d 342, 68 P.3d 282 (2003).

4 Mo.—Missouri Coalition for Environment v. Joint Committee on Administrative Rules, 948 S.W.2d 125 (Mo. 1997), as modified on denial of reh'g, (Feb. 25, 1997).

Power to declare statute unconstitutional

The power of judicial review includes the power to declare acts of the state legislature to be unconstitutional.

Miss.—City of Belmont v. Mississippi State Tax Com'n, 860 So. 2d 289 (Miss. 2003).

Responsibility to interpret legislative enactments.

The Judicial Branch has the power and the responsibility to interpret the legislative enactments.
Ark.—Arkansas State Bd. of Election Com'rs v. Pulaski County Election Com'n, 2014 Ark. 236, 437 S.W.3d 80 (2014).

5 Ill.—People ex rel. Sherman v. Cryns, 203 Ill. 2d 264, 271 Ill. Dec. 881, 786 N.E.2d 139 (2003).

6 Del.—Evans v. State, 872 A.2d 539 (Del. 2005).

End of Document

16 C.J.S. Constitutional Law § 383

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

1. In General

§ 383. Determination of powers of governmental departments

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2452, 2453

The judiciary must determine the nature and scope of the several departments of government and define the constitutional restrictions, whether express or necessarily implied, on the three branches of government.

Generally speaking, legislative power is the power to make, amend, or repeal laws, while executive power is the power to enforce the laws, and judicial power is the power to interpret and apply the laws to actual controversies.[1] However, the judiciary must determine the nature and scope of the several departments of government[2] and define the constitutional restrictions, whether express or necessarily implied, on the three branches of government.[3] It is the duty of the judicial department to see that no one department of government encroaches on the prerogatives of another.[4] Thus, it is the courts' duty to determine the effect of the actions of each branch of government[5] and whether any department has exceeded its constitutional functions,[6] and to restrain the departments from exceeding their power and authority.[7]

The United States Supreme Court has the authority to interpret claims of the other branches of the federal government with respect to powers alleged to derive from enumerated powers.[8] Likewise, it is the role of the judiciary of a particular state to

declare the boundaries which the state constitution sets between Executive and Legislative Branches.[9] The Judicial Branch may, indeed must, intervene in matters generally reserved to the other branches of state government when an action of the executive or Legislative Branches offends a state constitution or the United States Constitution.[10] However, if the text of the constitution has demonstrably committed the disposition of a particular matter to a coordinate branch of government, a court should decline to adjudicate the issue to avoid encroaching upon the powers and functions of that branch.[11]

Nonetheless, it is for the judiciary to pass on the constitutionality of the official and specific acts of the other departments of government,[12] such as the constitutionality of statutes.[13] It is duty of the court to see that the legislature does not seek to achieve noble ends by unconstitutionally arbitrary means.[14] The Judicial Branch also has the function of requiring the Executive Branch to stay within limits prescribed by the Legislative Branch.[15] Accordingly, courts have a responsibility to inform the proper authorities when a statute is being administered improperly.[16]

Acts of the courts are measured by the same constitutional standards as are applied to the Legislative and Executive Branches.[17] The courts, being the final interpretative bodies as to constitutional matters, must exercise extreme care and caution when declaring their own powers under the constitution.[18]

CUMULATIVE SUPPLEMENT

Cases:

Article II of the Constitution guarantees the independence of the Executive Branch. U.S. Const. art. 2, § 1 et seq. Trump v. Vance, 140 S. Ct. 2412 (2020).

Although, in this constitutional system of government, the judiciary is said to be supreme in determining the jurisdiction and limits on the powers of the other branches of the government, as fixed by the constitution and laws, this supremacy does not extend to the point where a court may substitute its judgment for or control the discretionary action of the executive or legislative branches, so long as their action is within the sphere and jurisdiction fixed by the statutes and constitution. Knob Hill Development LLC v. Town of Georgetown, 133 N.E.3d 729 (Ind. Ct. App. 2019), transfer denied, 2020 WL 429207 (Ind. 2020).

[END OF SUPPLEMENT]

Footnotes

1 Kan.—Gleason v. Samaritan Home, 260 Kan. 970, 926 P.2d 1349 (1996).
As to the nature and scope of legislative powers, generally, see § 281.
As to the nature and scope of executive powers, generally, see § 447.

2 U.S.—U.S. v. Miller, 367 F.2d 72 (2d Cir. 1966).
Fla.—Sullivan v. Askew, 348 So. 2d 312 (Fla. 1977).
N.D.—State ex rel. Sanstead v. Freed, 251 N.W.2d 898 (N.D. 1977).
Utah—Shelmidine v. Jones, 550 P.2d 207 (Utah 1976).
As to separation of powers among governmental departments, generally, see § 272.
Extent of congressional power
The United States Constitution's separation of federal power and the creation of the Judicial Branch indicate that disputes regarding the extent of congressional power are largely subject to judicial review, but due respect for the decisions of a coordinate branch of government demands that the United States Supreme Court

invalidate a congressional enactment only upon a plain showing that Congress has exceeded its constitutional bounds.

U.S.—U.S. v. Morrison, 529 U.S. 598, 120 S. Ct. 1740, 146 L. Ed. 2d 658, 144 Ed. Law Rep. 28 (2000).

3 Del.—duPont v. Director of Division of Revenue of Dept. of Finance, 347 A.2d 653 (Del. 1975).

N.Y.—People v. Shepard, 50 N.Y.2d 640, 431 N.Y.S.2d 363, 409 N.E.2d 840 (1980).

4 Mass.—New Bedford Standard-Times Pub. Co. v. Clerk of Third Dist. Court of Bristol, 377 Mass. 404, 387 N.E.2d 110 (1979).

N.J.—In re P.L. 2001, Chapter 362, 186 N.J. 368, 895 A.2d 1128 (2006).

N.Y.—Lorie C. v. St. Lawrence County Dept. of Social Services, 49 N.Y.2d 161, 424 N.Y.S.2d 395, 400 N.E.2d 336 (1980).

5 Idaho—Miller v. Meredith, 59 Idaho 385, 83 P.2d 206 (1938).

6 U.S.—Chadha v. Immigration and Naturalization Service, 634 F.2d 408 (9th Cir. 1980), judgment aff'd, 462 U.S. 919, 103 S. Ct. 2764, 77 L. Ed. 2d 317 (1983).

Fla.—Sullivan v. Askew, 348 So. 2d 312 (Fla. 1977).

Iowa—Webster County Bd. of Sup'rs v. Flattery, 268 N.W.2d 869 (Iowa 1978).

7 U.S.—National Treasury Employees Union v. Nixon, 492 F.2d 587 (D.C. Cir. 1974).

N.J.—In re P.L. 2001, Chapter 362, 186 N.J. 368, 895 A.2d 1128 (2006).

Wis.—Outagamie County v. Smith, 38 Wis. 2d 24, 155 N.W.2d 639 (1968).

8 U.S.—U.S. v. Nixon, 418 U.S. 683, 94 S. Ct. 3090, 41 L. Ed. 2d 1039 (1974).

9 Wis.—Risser v. Klauser, 207 Wis. 2d 176, 558 N.W.2d 108 (1997).

10 Ill.—In re Adoption of L.T.M., 214 Ill. 2d 60, 291 Ill. Dec. 645, 824 N.E.2d 221 (2005).

11 N.H.—Horton v. McLaughlin, 149 N.H. 141, 821 A.2d 947 (2003).

12 U.S.—Powell v. McCormack, 395 U.S. 486, 89 S. Ct. 1944, 23 L. Ed. 2d 491 (1969).

Ind.—State ex rel. Mass Transp. Authority of Greater Indianapolis v. Indiana Revenue Bd., 146 Ind. App. 334, 255 N.E.2d 833 (1970).

Nev.—State v. Rosenthal, 93 Nev. 36, 559 P.2d 830 (1977).

Judicial review

Judicial review is concomitant of separation of powers.

U.S.—Crowther v. Seaborg, 312 F. Supp. 1205 (D. Colo. 1970).

13 Cal.—Bautista v. State, 201 Cal. App. 4th 716, 133 Cal. Rptr. 3d 909 (2d Dist. 2011).

Haw.—Alakai Na Keiki, Inc. v. Matayoshi, 127 Haw. 263, 277 P.3d 988, 280 Ed. Law Rep. 450 (2012).

Idaho—State v. Abdullah, 2015 WL 856787 (Idaho 2015).

Kan.—Gannon v. State, 298 Kan. 1107, 319 P.3d 1196, 302 Ed. Law Rep. 377 (2014).

La.—Piazza's Seafood World, LLC v. Odom, 6 So. 3d 820 (La. Ct. App. 1st Cir. 2008).

Minn.—Citizens for Rule of Law v. Senate Committee on Rules & Admin., 770 N.W.2d 169 (Minn. Ct. App. 2009).

N.C.—Rockford-Cohen Group, LLC v. North Carolina Dept. of Ins., 749 S.E.2d 469 (N.C. Ct. App. 2013), appeal dismissed, review denied, 367 N.C. 532, 762 S.E.2d 461 (2014) and review dismissed, 367 N.C. 532, 762 S.E.2d 461 (2014).

Ohio—Maloney v. Rhodes, 45 Ohio St. 2d 319, 74 Ohio Op. 2d 499, 345 N.E.2d 407 (1976).

Tenn.—Williams v. Carr, 218 Tenn. 564, 404 S.W.2d 522 (1966).

Vt.—State v. Ludlow Supermarkets, Inc., 141 Vt. 261, 448 A.2d 791 (1982).

14 Haw.—Hasegawa v. Maui Pineapple Co., 52 Haw. 327, 475 P.2d 679 (1970).

15 U.S.—Hill v. Tennessee Valley Authority, 549 F.2d 1064 (6th Cir. 1977), judgment aff'd, 437 U.S. 153, 98 S. Ct. 2279, 57 L. Ed. 2d 117 (1978).

Iowa—Schmitt v. Iowa Dept. of Social Services, 263 N.W.2d 739 (Iowa 1978).

16 N.Y.—Housing and Development Administration of City of New York v. Community Housing Imp. Program, Inc., 90 Misc. 2d 813, 396 N.Y.S.2d 125 (App. Term 1977), order aff'd, 59 A.D.2d 773, 398 N.Y.S.2d 997 (2d Dep't 1977).

17 Cal.—Sun Co. of San Bernardino v. Superior Court, 29 Cal. App. 3d 815, 105 Cal. Rptr. 873 (4th Dist. 1973).

As to judicial powers and functions, generally, see § 380.

18 Minn.—State v. Osterloh, 275 N.W.2d 578 (Minn. 1978).

As to the inherent power of the courts, see § 387.

End of Document

16 C.J.S. Constitutional Law § 384

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

1. In General

§ 384. Separation of powers

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2452, 2453

Under the concept of separation of powers, the judicial power may not be shared with another branch of government.

Under the basic concept of separation of powers that flows from the scheme of a tripartite government adopted in the Constitution, the judicial power of the United States can no more be shared with another branch than the Chief Executive can share with the judiciary the veto power, or the Congress share with the judiciary the power to override a presidential veto.[1] The constitutional principle of separation of powers prohibits the courts from performing nonjudicial functions and prohibits administrative agencies from performing judicial functions.[2] Likewise, a separation-of-powers provision of a state constitution may prohibit other branches of government from taking actions which unduly infringe upon the inherent powers of judges.[3] However, with respect to the judiciary, the separation-of-powers principle is not offended by choices that the other branches make unless those choices unduly burden the capacity of the judiciary to perform its core function.[4]

It is a separation-of-powers principle that when an Act of Congress is alleged to conflict with the Constitution, it is emphatically the province and duty of the judicial department to say what the law is.[5] Under the separation-of-powers doctrine, the judiciary is invested primarily with the adjudicative function and authority to hear and determine disputes.[6]

CUMULATIVE SUPPLEMENT

Cases:

Maritime law is no longer solely the province of the Federal Judiciary; Congress and the States have legislated extensively in these areas. The Dutra Group v. Batterton, 139 S. Ct. 2275 (2019).

Article III's cases-and-controversies requirement preserves the tripartite structure of the Federal Government, prevents the Federal Judiciary from intruding upon the powers given to the other branches, and confines the federal courts to a properly judicial role. U.S.C.A. Const. Art. 3, § 2, cl. 1. Town of Chester, N.Y. v. Laroe Estates, Inc., 137 S. Ct. 1645 (2017).

In order to remain faithful to the Constitution's tripartite structure, the power of the Federal Judiciary may not be permitted to intrude upon the powers given to the other branches. U.S.C.A. Const. Art. 3, § 1. Spokeo, Inc. v. Robins, 136 S. Ct. 1540 (2016).

Under the basic concept of separation of powers that flows from the scheme of a tripartite government adopted in the Constitution, the judicial power of the United States can no more be shared with another branch than the Chief Executive can share with the Judiciary the veto power, or the Congress share with the Judiciary the power to override a Presidential veto. U.S.C.A. Const. Art. 3, § 1 et seq. Stern v. Marshall, 564 U.S. 462, 131 S. Ct. 2594, 180 L. Ed. 2d 475 (2011).

Because the Constitution contemplates that democracy is the appropriate process for change, some questions, even those existential in nature, are the province of the political branches, rather than the judicial branch, under constitutional separation of powers. Juliana v. United States, 947 F.3d 1159 (9th Cir. 2020).

The Separation of Powers Clause of the Maine Constitution bars Maine courts exercise of executive or legislative power, and that separation is much more rigorous than the bar imposed by the United States Constitution upon the federal courts exercise of nonjudicial power. U.S. Const. art. 3, § 1 et seq.; Me. Const. art. 3, § 2. Burr v. Department of Corrections, 2020 ME 130, 240 A.3d 371 (Me. 2020).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Stern v. Marshall, 131 S. Ct. 2594, 180 L. Ed. 2d 475 (2011).

2 Ala.—Gallant v. Gallant, 2014 WL 7202968 (Ala. Civ. App. 2014).
Md.—Consolidated Const. Services, Inc. v. Simpson, 372 Md. 434, 813 A.2d 260 (2002).
Constraint on court's inherent authority
U.S.—U.S. v. Slone, 969 F. Supp. 2d 830 (E.D. Ky. 2013).
Role of court
Ultimately, it is the role of courts to provide relief to claimants who have suffered, or will imminently suffer, actual harm; it is not the role of the courts, but that of the political branches, to shape the institutions of government in such fashion as to comply with the laws and the Constitution.
U.S.—Arpaio v. Obama, 27 F. Supp. 3d 185 (D.D.C. 2014).
Administrative rulemaking powers

The court of appeals has primary responsibility for the administration of the Judicial Branch of government, and some administrative rulemaking powers are vested exclusively in the court of appeals.

N.Y.—New York State Ass'n of Criminal Defense Lawyers v. Kaye, 95 N.Y.2d 556, 721 N.Y.S.2d 588, 744 N.E.2d 123 (2000).

3 Ill.—Pucinski v. County of Cook, 192 Ill. 2d 540, 249 Ill. Dec. 835, 737 N.E.2d 225 (2000).

4 Or.—State ex rel. Metropolitan Public Defender Services, Inc. v. Courtney, 335 Or. 236, 64 P.3d 1138 (2003).

Aggrandizement of power

There is no exclusive commitment to the Executive of the power to determine the constitutionality of a statute, and the Judicial Branch appropriately exercises that authority, including in a case where the question is whether Congress or the Executive is aggrandizing its power at the expense of another branch.

U.S.—Zivotofsky ex rel. Zivotofsky v. Clinton, 132 S. Ct. 1421, 182 L. Ed. 2d 423, 75 A.L.R. Fed. 2d 637 (2012).

5 U.S.—U.S. v. Windsor, 133 S. Ct. 2675, 186 L. Ed. 2d 808 (2013).

6 Okla.—Yocum v. Greenbriar Nursing Home, 2005 OK 27, 130 P.3d 213 (Okla. 2005).

As to the separation-of-powers doctrine, generally, see § 272.

Determination of nature of power

Determining whether a power is judicial in nature, for purposes of the separation-of-powers clause, depends on the substance and effect of the power rather than on the procedural posture of the case.

Cal.—People v. Superior Court (On Tai Ho), 11 Cal. 3d 59, 113 Cal. Rptr. 21, 520 P.2d 405 (1974).

Vt.—State v. Pierce, 163 Vt. 192, 657 A.2d 192 (1995).

End of Document

16 C.J.S. Constitutional Law § 385

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

1. In General

§ 385. Matters to be considered in declaring what law is

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2450 to 2459

In performing the judicial function of declaring what the law is, the judiciary department must accept the law as it is imposed by the proper lawmaking power unless plainly inconsistent with constitutional dictates.

In performing the judicial function of declaring what the law is, the judiciary department must accept the law as it is imposed by the proper lawmaking power,[1] unless plainly inconsistent with constitutional dictates,[2] having due regard to considerations of public policy.[3] The judiciary cannot, however, in declaring what the law is, disregard the presently existing law by reason of considerations based on public or humane grounds.[4] Moreover, in performing such a function, the judicial department should not be influenced by considerations of popular opinion or approval.[5]

Footnotes

1 Colo.—Journeymen Barbers, Hairdressers, Cosmetologists & Proprietors Intern. Union of America, Local Union No. 205 v. Industrial Com'n, 128 Colo. 121, 260 P.2d 941, 42 A.L.R.2d 700 (1953).
La.—Ilardo v. Agurs, 226 La. 613, 76 So. 2d 904 (1954).
Ohio—Sorge v. Sutton, 159 Ohio St. 574, 50 Ohio Op. 462, 113 N.E.2d 10 (1953).
Enactment of substantive and procedural laws
The legislature generally has the power to enact substantive law while the state supreme court has the power to enact procedural law.
Fla.—Allen v. Butterworth, 756 So. 2d 52 (Fla. 2000).
2 Okla.—Ex parte Davis, 66 Okla. Crim. 271, 91 P.2d 799 (1939).
3 U.S.—Board of Educ. of City of Bessemer v. U.S., 389 U.S. 840, 88 S. Ct. 77, 19 L. Ed. 2d 104 (1967).
Ky.—Owens v. Clemons, 408 S.W.2d 642 (Ky. 1966).
Mass.—Board of Selectmen of Avon v. Linder, 352 Mass. 581, 227 N.E.2d 359 (1967).
Wis.—Heath v. Zellmer, 35 Wis. 2d 578, 151 N.W.2d 664 (1967).
4 Cal.—Merco Constr. Engineers, Inc. v. Municipal Court, 21 Cal. 3d 724, 147 Cal. Rptr. 631, 581 P.2d 636 (1978).
5 U.S.—U.S. v. State of Mich., 460 F. Supp. 637 (W.D. Mich. 1978).
Nonrepresentative bodies
(1) As nonrepresentative bodies, courts do not, and are not designed to, reflect democratic society; their ability and competency to decide complex legal issues is dependable only within narrow limits.
U.S.—Walker v. Yucht, 352 F. Supp. 85 (D. Del. 1972).
(2) The state judiciary, unlike the legislature, is not an organ responsible for achieving representative government.
U.S.—New York State Ass'n of Trial Lawyers v. Rockefeller, 267 F. Supp. 148 (S.D. N.Y. 1967).

End of Document

16 C.J.S. Constitutional Law § 386

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

1. In General

§ 386. Matters to be considered in reviewing actions of other branches

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2450 to 2459

Courts should exercise the judicial function of reviewing the actions of other branches of government with caution and assume that the other branches act in good faith.

Courts have a limited role in reviewing the actions of other branches of government.[1] While it is the duty of the judicial department to see that no one department of government encroaches on the prerogatives of another,[2] the courts should exercise this power with extreme caution and only when there has been a plain and palpable abridgment of the powers of one department by another.[3] Furthermore, in passing on the acts of the other coordinate branches of the government, the judiciary should assume that they act in good faith,[4] should give effect to their legal acts rather than to supervise them,[5] and should exercise restraint rather than compulsion.[6] The federal courts must stay within their constitutionally prescribed sphere of action, whether or not exceeding that sphere will harm one of the other two branches of government.[7]

CUMULATIVE SUPPLEMENT

Cases:

As the Supreme Judicial Court performs its responsibilities of judicial review, it must also recognize and demonstrate due respect for the diligent efforts made by the other branches of government responsible for performing the functions it is reviewing, particularly when they involve complicated policy choices. Massachusetts General Hospital v. C.R., 484 Mass. 472, 142 N.E.3d 545 (2020).

[END OF SUPPLEMENT]

Footnotes

1 N.J.—Brady v. Department of Personnel, 149 N.J. 244, 693 A.2d 466 (1997).
Compelling other branches of government to act
When litigants seek to invoke the power of the judiciary to compel another branch of government to perform or act, the courts must closely and carefully examine whether the action is within the confines of their constitutional authority.
La.—Hoag v. State, 889 So. 2d 1019 (La. 2004).

2 § 383.

3 Colo.—Gates Rubber Co. v. South Suburban Metropolitan Recreation and Park Dist., 183 Colo. 222, 516 P.2d 436 (1973).
D.C.—U.S. v. Shaw, 226 A.2d 366 (D.C. 1967).
Nev.—Galloway v. Truesdell, 83 Nev. 13, 422 P.2d 237 (1967).
Or.—Sadler v. Oregon State Bar, 275 Or. 279, 550 P.2d 1218, 83 A.L.R.3d 762 (1976).
Clearly justiciable controversy
The courts have no general role in shifting emphasis between competing branches of government; it is only when a distinct aspect of a struggle surfaces into a clearly justiciable controversy that a court must act, and then the court should apply well-settled legal principles to the limited dispute presented, leaving the ultimate solutions to democratic processes.
U.S.—Consumers Union of U. S., Inc. v. Rogers, 352 F. Supp. 1319 (D.D.C. 1973).

4 N.M.—State ex rel. Yeo v. Ulibarri, 1929-NMSC-051, 34 N.M. 184, 279 P. 509 (1929).
Acceptance of representations
In good faith, courts must accept those representations made by members of a coordinate branch of government at face value.
U.S.—Iowa Beef Processors, Inc. v. Bagley, 588 F.2d 638, 26 Fed. R. Serv. 2d 1287 (8th Cir. 1978).

5 U.S.—D.C. Federation of Civic Associations v. Airis, 275 F. Supp. 533 (D. D.C. 1967).
N.Y.—Abrams v. New York City Transit Authority (NYCTA), 78 Misc. 2d 938, 358 N.Y.S.2d 842 (Sup 1974), judgment aff'd, 48 A.D.2d 69, 368 N.Y.S.2d 165 (1st Dep't 1975), order aff'd, 39 N.Y.2d 990, 387 N.Y.S.2d 235, 355 N.E.2d 289 (1976).

6 U.S.—Breen v. Kahl, 296 F. Supp. 702 (W.D. Wis. 1969), judgment aff'd, 419 F.2d 1034 (7th Cir. 1969).
Miss.—State v. Wood, 187 So. 2d 820 (Miss. 1966).
Utah—Stone v. Department of Registration, 567 P.2d 1115 (Utah 1977).

7 U.S.—Steel Co. v. Citizens for a Better Environment, 523 U.S. 83, 118 S. Ct. 1003, 140 L. Ed. 2d 210 (1998).
Order directing levying of taxes
A court order directing a local government body to levy its own taxes is a judicial act within the power of a federal court.
U.S.—Missouri v. Jenkins, 495 U.S. 33, 110 S. Ct. 1651, 109 L. Ed. 2d 31, 59 Ed. Law Rep. 298 (1990).

End of Document

16 C.J.S. Constitutional Law § 387

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

§ 387. Extent of judicial power; implied and inherent powers

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2450 to 2459

The judicial department in the United States is subservient to only the Federal Constitution, the established law of the land, and, if a state judiciary, the state constitution.

The judicial department in the United States is subservient to only the Federal Constitution, the established law of the land, and, if a state judiciary, the state constitution.[1] That which is prohibited by a constitutional provision cannot be granted by the judiciary.[2]

All powers, even though not judicial in their nature, which are incident to the discharge by the courts of their judicial functions, are inherent in the courts.[3] Under the doctrine of inherent powers, the courts have the power, in addition to those powers expressly enumerated in constitutional and statutory provisions, to do all things reasonably necessary for the exercise of their functions as courts.[4] Implied powers are inherent in the courts where the exercise of such a power is necessary to allow the court to function, and an implied power is ancillary to a specific grant of jurisdiction where the power is necessary so as not to

deny the existence of jurisdiction which was intended by the legislature to be given.[5] Thus, the inherent powers of the Judicial Branch necessarily encompass the authority to administer the business of the courts.[6]

The courts have, and should maintain vigorously, all the inherent and implied powers necessary properly and effectively to function as a separate department of government.[7] Inherent powers allow the judiciary to maintain its status as a separate and coequal branch of government.[8] Without inherent powers to perform its duties, the judiciary would become a subordinate branch of government, which is contrary to the central tenet of separation of powers.[9] The exercise by the judiciary of powers which are inherent because essential to the exercise of the judicial function is not forbidden by constitutional provisions for the division of the powers of government among the several departments.[10]

The judiciary is, however, mandated by separation of powers concerns to proceed cautiously in relying on inherent authority.[11] The judiciary is not to resort to inherent authority when doing so would not respect the equally unique authority of another branch of government.[12]

CUMULATIVE SUPPLEMENT

Cases:

Judicial inquiry into the national-security realm raises concerns for the separation of powers in trenching on matters committed to the other branches; these concerns are even more pronounced when the judicial inquiry comes in the context of a claim seeking money damages rather than a claim seeking injunctive or other equitable relief. U.S.C.A. Const. Art. 1, § 8; U.S.C.A. Const. Art. 2, §§ 1, 2. Ziglar v. Abbasi, 2017 WL 2621317 (U.S. 2017).

[END OF SUPPLEMENT]

Footnotes

1 Fla.—White v. State, 47 So. 2d 863 (Fla. 1950); Petition of Florida State Bar Ass'n, 40 So. 2d 902 (Fla. 1949).
Ill.—People v. Spegal, 5 Ill. 2d 211, 125 N.E.2d 468, 51 A.L.R.2d 1337 (1955).
N.Y.—People v. Scher, 76 Misc. 2d 71, 349 N.Y.S.2d 902 (Sup 1973).

2 Okla.—Cruse v. State, 2003 OK CR 8, 67 P.3d 920 (Okla. Crim. App. 2003).

3 Iowa—Webster County Bd. of Sup'rs v. Flattery, 268 N.W.2d 869 (Iowa 1978).
N.C.—In re Albemarle Mental Health Center, 42 N.C. App. 292, 256 S.E.2d 818 (1979).
Ohio—State ex rel. Johnston v. Taulbee, 66 Ohio St. 2d 417, 20 Ohio Op. 3d 361, 423 N.E.2d 80 (1981).
As to separation of powers among governmental departments, generally, see § 272.
Sources of inherent judicial powers
Inherent judicial powers stem from two sources: the separation-of-powers doctrine and the power inherent in a court by virtue of its sheer existence.
Nev.—Blackjack Bonding v. City of Las Vegas Municipal Court, 116 Nev. 1213, 14 P.3d 1275 (2000).

4 La.—Safety Net for Abused Persons v. Segura, 692 So. 2d 1038 (La. 1997).
Regulation of judiciary is inherent power
W. Va.—State ex rel. Carenbauer v. Hechler, 208 W. Va. 584, 542 S.E.2d 405 (2000).

5 Mass.—School Committee of Worcester v. Worcester Div. of Juvenile Court Dept., 410 Mass. 831, 575 N.E.2d 1120, 68 Ed. Law Rep. 1119 (1991).

6 La.—Safety Net for Abused Persons v. Segura, 692 So. 2d 1038 (La. 1997).
Efficient administration

The courts possess inherent power to effectuate the orderly and efficient administration of justice without being financially or procedurally inhibited by the legislature.

Ohio—State ex rel. Johnston v. Taulbee, 66 Ohio St. 2d 417, 20 Ohio Op. 3d 361, 423 N.E.2d 80 (1981).

7 Mass.—Opinions of the Justices to the Senate, 372 Mass. 883, 363 N.E.2d 652 (1977).

Mich.—In re "Sunshine Law," 1976 PA 267, 400 Mich. 660, 255 N.W.2d 635 (1977).

Freedom from impediments

(1) Under Pennsylvania law, the judiciary has the inherent power to prevent any actual impairment of its independence created by the collective bargaining process.

U.S.—Miller v. Clinton County, 544 F.3d 542 (3d Cir. 2008).

(2) For the judiciary to play undiminished role as independent and equal coordinate branch of government nothing must impede immediate, necessary, efficient, and basic functioning of courts.

Iowa—Webster County Bd. of Sup'rs v. Flattery, 268 N.W.2d 869 (Iowa 1978).

8 Wis.—Barland v. Eau Claire County, 216 Wis. 2d 560, 575 N.W.2d 691 (1998).

As to the nature and scope of departments of government, see § 383.

9 Nev.—Blackjack Bonding v. City of Las Vegas Municipal Court, 116 Nev. 1213, 14 P.3d 1275 (2000).

10 N.D.—State ex rel. Mason v. Baker, 69 N.D. 488, 288 N.W. 202 (1939).

11 Minn.—State v. M.D.T., 831 N.W.2d 276 (Minn. 2013).

12 Minn.—State v. Ali, 855 N.W.2d 235 (Minn. 2014).

End of Document

16 C.J.S. Constitutional Law § 388

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

§ 388. Particular powers within scope of judiciary

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2450 to 2459

Particular powers that are within the proper scope of the judiciary include, among others, the power to construe constitutional provisions, to regulate the practice of law, to regulate matters of court procedure, to hear causes pending between adverse parties, and to apply the law to the facts of particular cases.

It is a permanent and indispensable feature of our constitutional system that the federal judiciary is supreme in the exposition of the law of the United States Constitution.[1] Likewise, the ultimate power to interpret, construe, and enforce a state constitution belongs to the judiciary of the state.[2]

Other particular powers which are within the proper scope of the judiciary are the power to regulate the practice of law,[3] to determine what constitutes the practice of law,[4] to regulate matters of court procedure,[5] to determine whether an issue presented to the courts in a case or controversy is or is not justiciable,[6] to hear causes pending between adverse parties,[7] to apply the law to the facts of particular cases,[8] to award general damages,[9] to enforce subpoenas,[10] to determine the degree of proof is required in a proceeding,[11] to determine the ultimate admissibility of evidence,[12] to decide whether liability exists as between parties

litigant,[13] and to issue a final judgment and thereby conclusively resolve a case.[14] The trial of those charged with crimes and the imposition of sentences on those convicted are, likewise, judicial functions.[15]

Still, other matters that fall within the scope of the judicial function are the determination of whether a particular act constitutes the exercise of a right guaranteed by a constitution;[16] whether a right has vested or not;[17] what constitutes just compensation for property seized by the government;[18] what constitutes a proper exercise of the police power;[19] when, and under what circumstances, a violation of the separation of powers doctrine has occurred;[20] whether an individual is extradictable;[21] whether there has been a proper appropriation of expended public funds in accordance with the constitution;[22] and whether particular governmental obligations are valid.[23]

Footnotes

1 U.S.—U.S. v. Morrison, 529 U.S. 598, 120 S. Ct. 1740, 146 L. Ed. 2d 658, 144 Ed. Law Rep. 28 (2000); Islamic Shura Council of Southern California v. F.B.I., 779 F. Supp. 2d 1114 (C.D. Cal. 2011).
Conn.—Okeke v. Commissioner of Public Health, 304 Conn. 317, 39 A.3d 1095 (2012).
As to the nature and scope of legislative powers, generally, see §§ 280 to 379.
As to the effect of the separation-of-powers doctrine in determining the nature and scope of the powers of governmental departments, see § 384.
Role of political branches
The political branches have a role in interpreting and applying the federal constitution, but the United States Supreme Court remains the ultimate expositor of the constitutional text.
U.S.—U.S. v. Morrison, 529 U.S. 598, 120 S. Ct. 1740, 146 L. Ed. 2d 658, 144 Ed. Law Rep. 28 (2000).

2 Wash.—Tunstall ex rel. Tunstall v. Bergeson, 141 Wash. 2d 201, 5 P.3d 691, 146 Ed. Law Rep. 528 (2000).

3 U.S.—Matter of Arthur, 15 B.R. 541 (Bankr. E.D. Pa. 1981).
Idaho—Idaho State Bar Ass'n v. Idaho Public Utilities Commission, 102 Idaho 672, 637 P.2d 1168 (1981).
Md.—Attorney General of Maryland v. Waldron, 289 Md. 683, 426 A.2d 929, 17 A.L.R.4th 794 (1981).
Mass.—Ellis v. Department of Indus. Accidents, 463 Mass. 541, 977 N.E.2d 49 (2012).
R.I.—In re McKenna, 110 A.3d 1126 (R.I. 2015).
S.C.—In re Richland County Magistrate's Court, 389 S.C. 408, 699 S.E.2d 161 (2010).
Tex.—Goldberg v. Commission for Lawyer Discipline, 265 S.W.3d 568 (Tex. App. Houston 1st Dist. 2008).

4 Md.—Attorney Grievance Com'n of Maryland v. Brisbon, 422 Md. 625, 31 A.3d 110 (2011).
Neb.—State ex rel. Commission on Unauthorized Practice of Law v. M.A. Yah, 281 Neb. 383, 796 N.W.2d 189 (2011).

5 Ark.—Cato v. Craighead County Circuit Court, 2009 Ark. 334, 322 S.W.3d 484 (2009).
Fla.—Abdool v. Bondi, 141 So. 3d 529 (Fla. 2014).
Idaho—State v. Two Jinn, Inc., 148 Idaho 706, 228 P.3d 387 (Ct. App. 2010).
Me.—Anderson v. Neal, 428 A.2d 1189 (Me. 1981).
Mich.—People v. Jackson, 487 Mich. 783, 790 N.W.2d 340 (2010).
Minn.—In re Welfare of L.L.P., 836 N.W.2d 563 (Minn. Ct. App. 2013).
Miss.—State v. Delaney, 52 So. 3d 348 (Miss. 2011).
N.M.—State v. Sanchez, 98 N.M. 428, 1982-NMCA-105, 649 P.2d 496 (Ct. App. 1982) (overruled on other grounds by, State v. Belanger, 2009-NMSC-025, 146 N.M. 357, 210 P.3d 783 (2009)).
N.D.—City of Fargo v. Komad, 2006 ND 177, 720 N.W.2d 619 (N.D. 2006).
Enforcement of court rules
Wyo.—State v. Naple, 2006 WY 125, 143 P.3d 358 (Wyo. 2006).
Court is final arbiter of its rules of practice and procedure
Ky.—Glenn v. Com., 436 S.W.3d 186 (Ky. 2013).
Prescribing rules of procedure
Ala.—Beck v. State, 396 So. 2d 645 (Ala. 1980).

Fla.—Amos v. Department of Health and Rehabilitative Services, Dist. IV, Duval County, Unit 13, 416 So. 2d 841 (Fla. 1st DCA 1982).

6 Ga.—McDaniel v. Thomas, 248 Ga. 632, 285 S.E.2d 156, 1 Ed. Law Rep. 982 (1981).
N.J.—Trombetta v. Mayor and Com'rs of City of Atlantic City, 181 N.J. Super. 203, 436 A.2d 1349 (Law Div. 1981), judgment aff'd, 187 N.J. Super. 351, 454 A.2d 900 (App. Div. 1982).

7 N.J.—Trombetta v. Mayor and Com'rs of City of Atlantic City, 181 N.J. Super. 203, 436 A.2d 1349 (Law Div. 1981), judgment aff'd, 187 N.J. Super. 351, 454 A.2d 900 (App. Div. 1982).

8 U.S.—Prima Paint Corp. v. Flood & Conklin Mfg. Co., 388 U.S. 395, 87 S. Ct. 1801, 18 L. Ed. 2d 1270 (1967).
Ga.—Harrell v. Courson, 234 Ga. 350, 216 S.E.2d 105 (1975).
Ill.—People v. Nicholls, 71 Ill. 2d 166, 15 Ill. Dec. 759, 374 N.E.2d 194 (1978).

9 Cal.—Larson v. City and County of San Francisco, 192 Cal. App. 4th 1263, 123 Cal. Rptr. 3d 40 (1st Dist. 2011).

10 U.S.—In re Request from the United Kingdom Pursuant to the Treaty between the Government of the U.S. and the Government of the United Kingdom on Mut. Assistance in Criminal Matters in the Matter of Dolours Price, 718 F.3d 13 (1st Cir. 2013).

11 U.S.—Ward v. Holder, 733 F.3d 601 (6th Cir. 2013).

12 Mont.—State v. Damon, 2005 MT 218, 328 Mont. 276, 119 P.3d 1194 (2005).
Wis.—State v. James, 2005 WI App 188, 285 Wis. 2d 783, 703 N.W.2d 727 (Ct. App. 2005).

13 Ky.—Tipton v. Tipton, 309 Ky. 338, 217 S.W.2d 799 (1949).

14 U.S.—Fresenius USA, Inc. v. Baxter Intern., Inc., 721 F.3d 1330 (Fed. Cir. 2013), cert. denied, 134 S. Ct. 2295, 189 L. Ed. 2d 174 (2014).
Mo.—In re C.M.B., 322 S.W.3d 593 (Mo. Ct. App. S.D. 2010).

15 U.S.—Ford v. Caulfield, 652 F. Supp. 2d 14 (D.D.C. 2009).
Cal.—People v. Clancey, 56 Cal. 4th 562, 155 Cal. Rptr. 3d 485, 299 P.3d 131 (2013).
Conn.—State v. Darden, 171 Conn. 677, 372 A.2d 99 (1976).
Del.—State v. Sturgis, 947 A.2d 1087 (Del. 2008).
Fla.—Ransone v. State, 20 So. 3d 445 (Fla. 4th DCA 2009), decision approved, 48 So. 3d 692 (Fla. 2010).
Ill.—People v. McChriston, 2014 IL 115310, 378 Ill. Dec. 430, 4 N.E.3d 29 (Ill. 2014), petition for certiorari filed, 135 S. Ct. 59, 190 L. Ed. 2d 57 (2014).
Minn.—State v. Verdon, 727 N.W.2d 418 (Minn. Ct. App. 2007).
Wash.—Honore v. Washington State Bd. of Prison Terms and Paroles, 77 Wash. 2d 697, 466 P.2d 505 (1970).
As to the separation-of-powers doctrine, generally, see § 272.
As to the effect of the separation-of-powers doctrine in determining the nature and scope of the powers of governmental departments, see § 384.

Power to impose sentence is at core of court's judicial function

Mass.—Com. v. Cole, 468 Mass. 294, 10 N.E.3d 1081 (2014).

16 Wis.—John F. Jelke Co. v. Hill, 208 Wis. 650, 242 N.W. 576 (1932).

17 Mich.—Makowski v. Governor, 495 Mich. 465, 852 N.W.2d 61 (2014), as amended on reh'g, (Sept. 17, 2014).

18 Ga.—Calhoun v. State Highway Dept., 223 Ga. 65, 153 S.E.2d 418 (1967).
N.H.—New Hampshire Water Resources Bd. v. Pera, 108 N.H. 18, 226 A.2d 774 (1967).
Or.—Ray v. Davis, 249 Or. 1, 436 P.2d 741 (1968).

19 Okla.—Cryan v. State, 1978 OK CR 91, 583 P.2d 1122 (Okla. Crim. App. 1978).

20 Ill.—In re Derrico G., 2014 IL 114463, 383 Ill. Dec. 679, 15 N.E.3d 457 (Ill. 2014).

21 U.S.—Hoxha v. Levi, 371 F. Supp. 2d 651 (E.D. Pa. 2005), aff'd, 465 F.3d 554 (3d Cir. 2006).

22 Wash.—State v. Perala, 132 Wash. App. 98, 130 P.3d 852 (Div. 3 2006).

23 N.C.—Hartford Acc. & Indem. Co. v. Ingram, 290 N.C. 457, 226 S.E.2d 498 (1976).

End of Document

16 C.J.S. Constitutional Law § 389

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

1. In General

§ 389. Particular powers outside scope of judiciary

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2450 to 2459

Particular powers that are outside the proper scope of the judiciary include, among others, the power to determine what the law should be, to make laws, to substitute its discretion for that of other departments of government, and to determine whether an activity is for the common good or public welfare.

As distinguished from the primary function of the judiciary to declare what the law is, it is not a proper judicial function to determine what the law should be or to make laws.[1] Nor does it fall within the scope of the judiciary to substitute its discretion for that of other departments of government[2] or to judge the qualifications and elections of candidates for membership in the legislature.[3]

The question of whether an activity is for the common good or for public welfare is, generally speaking, not primarily a judicial one.[4] Also, decisions about setting state university tuition are constitutionally entrusted to branches of government other than the judiciary.[5]

Defining and enforcing the United States' obligations under international law require the making of extremely sensitive policy decisions that will inevitably color relationships with other nations, and as such, they are decisions of a kind for which the judiciary has neither aptitude, facilities, nor responsibility.[6]

Although the Judicial Branch is charged with deciding whether an individual is extradictable,[7] the decision whether to extradite the individual rests with the Executive Branch.[8]

CUMULATIVE SUPPLEMENT

Cases:

Guarantee Clause does not provide the basis for a justiciable claim. U.S. Const. art. 4, § 4. Rucho v. Common Cause, 139 S. Ct. 2484 (2019).

[END OF SUPPLEMENT]

Footnotes

1 Ala.—Alfa Mut. Ins. Co. v. City of Mobile, 981 So. 2d 371 (Ala. 2007), as modified on denial of reh'g, (Sept. 28, 2007).
N.Y.—United Press Ass'ns v. Valente, 281 A.D. 395, 120 N.Y.S.2d 174 (1st Dep't 1953), order aff'd, 308 N.Y. 71, 123 N.E.2d 777 (1954).
Okla.—Cooper v. State, 1966 OK CR 87, 415 P.2d 1009 (Okla. Crim. App. 1966), on reh'g, 1967 OK CR 175, 432 P.2d 951 (Okla. Crim. App. 1967).
As to the power and duty of the courts to declare what the law is, see § 381.
As to encroachment on the legislature, generally, see §§ 412 to 427
Advocacy of particular cause precluded
N.Y.—People v. Simmons, 71 Misc. 2d 940, 337 N.Y.S.2d 717 (Sup 1972).

2 U.S.—Simmons v. Gorton, 417 U.S. 902, 94 S. Ct. 2596, 41 L. Ed. 2d 208 (1974); Guerra v. Guajardo, 466 F. Supp. 1046 (S.D. Tex. 1978), aff'd, 597 F.2d 769 (5th Cir. 1979).
Mont.—State Bar of Montana v. Krivec, 193 Mont. 477, 632 P.2d 707 (1981).
Wash.—Fritz v. Gorton, 83 Wash. 2d 275, 517 P.2d 911 (1974).

3 Cal.—Fuller v. Bowen, 203 Cal. App. 4th 1476, 138 Cal. Rptr. 3d 394 (3d Dist. 2012).

4 U.S.—Gordon v. Lance, 403 U.S. 1, 91 S. Ct. 1889, 29 L. Ed. 2d 273 (1971).

5 Ariz.—Kromko v. Arizona Bd. of Regents, 216 Ariz. 190, 165 P.3d 168, 222 Ed. Law Rep. 870 (2007).

6 U.S.—U.S. v. Belfast, 611 F.3d 783 (11th Cir. 2010).

7 § 388.

8 U.S.—Hoxha v. Levi, 371 F. Supp. 2d 651 (E.D. Pa. 2005), aff'd, 465 F.3d 554 (3d Cir. 2006).

16 C.J.S. Constitutional Law § 390

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

§ 390. Advisory opinions

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2600 to 2609

The courts generally are not permitted to render advisory opinions, and the federal courts lack the power to render such opinions by reason of the constitutional provision restricting their jurisdiction to cases and controversies.

The exercise of judicial power under Article III of the United States Constitution depends on the existence of a case or controversy,[1] and the federal courts therefore lack the power to render advisory opinions,[2] even at the request of Congress,[3] or with the consent of the parties.[4] If an issue cannot be brought into a court, then there is no case or controversy, and the court does not have the power or jurisdiction to render a purely advisory opinion.[5] A decision that cannot affect the legal rights of the parties is an impermissible advisory opinion as are opinions on abstract legal questions.[6] Also, when a person who does not have standing to file suit nevertheless asks for relief, it is tantamount to a request for an advisory opinion.[7] The federal courts also are not permitted to decide moot questions.[8]

Since the United States Supreme Court has no jurisdiction or power to review a state-law determination that is independent of the federal question and adequate to support the judgment, resolution of any independent federal ground for the decision could not affect the judgment and would therefore be advisory.[9]

In the states, in the absence of constitutional or legislative provisions imposing on courts the duty of giving advisory opinions, it is usually held to be beyond the power of the judiciary to render such opinions.[10] Constitutional provisions requiring separation of the departments of government may be construed as prohibiting advisory opinions.[11] Since the courts are called upon to determine existing controversies, they may not be used as a vehicle to obtain advisory judicial opinions.[12] A court would, in effect, render an advisory opinion where a decision on the merits could not result in appropriate relief to the prevailing party.[13] Additionally, the courts should not decide abstract, hypothetical, or moot controversies, or render advisory opinions with respect to such controversies.[14]

CUMULATIVE SUPPLEMENT

Cases:

Article III, in granting federal courts the power to decide Cases or Controversies, requires that a case embody a genuine, live dispute between adverse parties, thereby preventing the federal courts from issuing advisory opinions. U.S. Const. art. 3, § 2, cl. 1. Carney v. Adams, 141 S. Ct. 493 (2020).

A party does not seek a prohibited advisory opinion where valuable legal rights would be directly affected to a specific and substantial degree by a decision from the court. Center for Biological Diversity v. United States Forest Service, 925 F.3d 1041 (9th Cir. 2019).

Court of Appeal would decline to issue advisory opinion suggesting a remedy for a future adoption case in which a child is mistakenly removed from the initial foster parents' care and placed with successor foster parents, all of whom wish to adopt the child; Court of Appeal determined the trial court did not abuse its discretion in making the difficult decision with which it was tasked, and, under separation of powers doctrine, Court could not encroach upon county social services agency's own internal management or matters of administrative detail, although Court would suggest that agency consider whether new regulations, procedures, or policies should be implemented to protect foster parents who suffer the removal of a child under perceived but unfounded exigent circumstances. In re F.A., 241 Cal. App. 4th 107, 193 Cal. Rptr. 3d 556 (4th Dist. 2015).

Kansas court issuing an advisory opinion would violate the separation of powers doctrine by exceeding its constitutional authority. State ex rel. Schmidt v. Kelly, 441 P.3d 67 (Kan. 2019).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—U.S. Nat. Bank of Oregon v. Independent Ins. Agents of America, Inc., 508 U.S. 439, 113 S. Ct. 2173, 124 L. Ed. 2d 402 (1993).
Answer to certified question
A high court's answer to a certified question is not an improper advisory opinion so long as (1) a court addresses only issues that are truly contested by the parties and are presented on a factual record, and (2) the court's opinion on the certified question will be dispositive of the issue, and res judicata between the parties. Ark.—Bowerman v. Takeda Pharmaceuticals U.S.A., 2014 Ark. 388, 442 S.W.3d 839 (2014).

2 U.S.—U.S. Nat. Bank of Oregon v. Independent Ins. Agents of America, Inc., 508 U.S. 439, 113 S. Ct. 2173, 124 L. Ed. 2d 402 (1993); F.C.C. v. Pacifica Foundation, 438 U.S. 726, 98 S. Ct. 3026, 57 L. Ed. 2d 1073 (1978); In re Checking Account Overdraft Litigation, 780 F.3d 1031 (11th Cir. 2015); Davis v. Billington, 51 F. Supp. 3d 97 (D.D.C. 2014).

Hypothetical questions

The United States Supreme Court does not sit to decide hypothetical issues or to give advisory opinions about issues as to which there are not adverse parties before the Court.

U.S.—Princeton University v. Schmid, 455 U.S. 100, 102 S. Ct. 867, 70 L. Ed. 2d 855 (1982).

3 U.S.—Keller v. Potomac Electric Power Co., 261 U.S. 428, 43 S. Ct. 445, 67 L. Ed. 731 (1923).

4 U.S.—La Bonte v. Gates, 406 F. Supp. 1227 (D. Conn. 1976).

5 U.S.—In re Outboard Marine Corp., 304 B.R. 844 (Bankr. N.D. Ill. 2004).

6 U.S.—In re Outboard Marine Corp., 304 B.R. 844 (Bankr. N.D. Ill. 2004).

Ill.—In re Marriage of O'Brien, 2011 IL 109039, 354 Ill. Dec. 715, 958 N.E.2d 647 (Ill. 2011).

7 Kan.—Cochran v. State, Dept. of Agr., Div. of Water Resources, 291 Kan. 898, 249 P.3d 434 (2011).

8 U.S.—Amalgamated Ass'n of St., Elec. Ry. & Motor Coach Emp. of America, Division 998 v. Wisconsin Employment Relations Bd., 340 U.S. 416, 71 S. Ct. 373, 95 L. Ed. 389 (1951); Matter of King Resources Co., 651 F.2d 1326, 6 Fed. R. Evid. Serv. 254 (10th Cir. 1980).

9 U.S.—Lambrix v. Singletary, 520 U.S. 518, 117 S. Ct. 1517, 137 L. Ed. 2d 771 (1997); Coleman v. Thompson, 501 U.S. 722, 111 S. Ct. 2546, 115 L. Ed. 2d 640 (1991) (holding modified on other grounds by, Martinez v. Ryan, 132 S. Ct. 1309, 182 L. Ed. 2d 272 (2012)).

10 Ala.—Riley v. Cornerstone Community Outreach, Inc., 57 So. 3d 704 (Ala. 2010).

Alaska—Asa'carsarmiut Tribal Council v. Wheeler, 337 P.3d 1182 (Alaska 2014).

Ariz.—State v. Okun, 231 Ariz. 462, 296 P.3d 998 (Ct. App. Div. 1 2013), cert. denied, 134 S. Ct. 1759, 188 L. Ed. 2d 592 (2014).

Ark.—Our Community, Our Dollars v. Bullock, 2014 Ark. 457, 452 S.W.3d 552 (2014).

Cal.—Boorstein v. CBS Interactive, Inc., 222 Cal. App. 4th 456, 165 Cal. Rptr. 3d 669 (2d Dist. 2013), review denied, (Mar. 12, 2014).

Colo.—People v. Campbell, 196 Colo. 390, 589 P.2d 1360 (1978).

Conn.—Francis v. Fonfara, 303 Conn. 292, 33 A.3d 185 (2012).

Del.—XI Specialty Ins. Co. v. WMI Liquidating Trust, 93 A.3d 1208 (Del. 2014).

Fla.—Northwoods Sports Medicine and Physical Rehabilitation, Inc. v. State Farm Mut. Auto. Ins. Co., 137 So. 3d 1049 (Fla. 4th DCA 2014), review denied, 2015 WL 1403734 (Fla. 2015).

Ga.—Dempsey v. Gwinnett Hosp. System, Inc., 330 Ga. App. 469, 765 S.E.2d 525 (2014).

Idaho—Taylor v. AIA Services Corp., 151 Idaho 552, 261 P.3d 829 (2011).

Ill.—In re Estate of Powell, 2014 IL 115997, 382 Ill. Dec. 14, 12 N.E.3d 14 (Ill. 2014).

Ind.—Snyder v. King, 958 N.E.2d 764 (Ind. 2011).

Kan.—Gannon v. State, 298 Kan. 1107, 319 P.3d 1196, 302 Ed. Law Rep. 377 (2014).

Ky.—Jarvis v. National City, 410 S.W.3d 148 (Ky. 2013).

La.—State v. Malone, 25 So. 3d 113 (La. 2009).

Md.—Ireland v. Shearin, 417 Md. 401, 10 A.3d 754 (2010).

Me.—Flaherty v. Muther, 2011 ME 32, 17 A.3d 640 (Me. 2011).

Minn.—Schowalter v. State, 822 N.W.2d 292 (Minn. 2012).

Miss.—In re City of Biloxi, 113 So. 3d 565 (Miss. 2013).

Mo.—Friends of the San Luis, Inc. v. Archdiocese of St. Louis, 312 S.W.3d 476 (Mo. Ct. App. E.D. 2010).

Mont.—Houden v. Todd, 2014 MT 113, 375 Mont. 1, 324 P.3d 1157 (2014).

N.C.—In re Accutane Litigation, 758 S.E.2d 13 (N.C. Ct. App. 2014).

N.D.—Carlson v. Carlson, 2011 ND 168, 802 N.W.2d 436 (N.D. 2011).

N.J.—New Jersey Ass'n for Retarded Citizens, Inc. v. New Jersey Dept. of Human Services, 89 N.J. 234, 445 A.2d 704 (1982).

N.Y.—Coleman ex rel. Coleman v. Daines, 19 N.Y.3d 1087, 955 N.Y.S.2d 831, 979 N.E.2d 1158 (2012).

Neb.—Glantz v. Daniel, 21 Neb. App. 89, 837 N.W.2d 563 (2013), review denied, (Sept. 25, 2013).

Ohio—State ex rel. Vindicator Printing Co. v. Wolff, 132 Ohio St. 3d 481, 2012-Ohio-3328, 974 N.E.2d 89 (2012).

Okla.—In re Guardianship of Berry, 2014 OK 56, 335 P.3d 779 (Okla. 2014).
Or.—Hale v. State, 259 Or. App. 379, 314 P.3d 345 (2013), review denied, 354 Or. 840, 326 P.3d 77 (2014).
Pa.—Stuckley v. Zoning Hearing Bd. of Newtown Tp., 621 Pa. 509, 79 A.3d 510 (2013).
S.D.—In re Estate of Ricard, 2014 SD 54, 851 N.W.2d 753 (S.D. 2014).
Tenn.—Hooker v. Haslam, 437 S.W.3d 409 (Tenn. 2014).
Tex.—Tesco Corporation (US) v. Steadfast Insurance Company, 2015 WL 456466 (Tex. App. Houston 1st Dist. 2015).
Utah—Carlton v. Brown, 2014 UT 6, 323 P.3d 571 (Utah 2014).
Va.—Daily Press, Inc. v. Com., 285 Va. 447, 739 S.E.2d 636 (2013).
Vt.—Dernier v. Mortgage Network, Inc., 195 Vt. 113, 2013 VT 96, 87 A.3d 465 (2013).
W. Va.—Lehman v. United Bank, Inc., 228 W. Va. 202, 719 S.E.2d 370 (2011).
Wash.—Schlotfeldt v. Benton County, 172 Wash. App. 888, 292 P.3d 807 (Div. 3 2013).
Wis.—Commerce Bluff One Condominium Ass'n, Inc. v. Dixon, 2011 WI App 46, 332 Wis. 2d 357, 798 N.W.2d 264 (Ct. App. 2011).
Wyo.—In re Estate of George, 2011 WY 157, 265 P.3d 222 (Wyo. 2011).

Advisory opinions only in carefully circumscribed situations

N.H.—Duncan v. State, 166 N.H. 630, 102 A.3d 913 (2014).

Advisory opinions not binding

In giving advisory opinions, the justices of the Supreme Court do not render a decision of the Court, but only express their opinions as individual justices, and for this reason, such opinions have no binding force.
R.I.—Narragansett Indian Tribe v. State, 110 A.3d 1160 (R.I. 2015).

Solemn occasions

The constitutional requirement limiting advisory opinions of Justices of the Supreme Judicial Court to "solemn occasions" is strictly construed.
Mass.—Answer of the Justices to the Governor, 444 Mass. 1201, 829 N.E.2d 1111 (2005).

Self-imposed rule of restraint

Courts follow self-imposed rules of judicial restraint so that they stay within their province to decide, not advise, and to settle rights, not to give abstract opinions.
Tenn.—Hooker v. Haslam, 437 S.W.3d 409 (Tenn. 2014).

11 U.S.—Flast v. Cohen, 392 U.S. 83, 88 S. Ct. 1942, 20 L. Ed. 2d 947 (1968).
Ind.—City of Mishawaka v. Mohney, 156 Ind. App. 668, 297 N.E.2d 858 (1973).
Kan.—National Ed. Association—Topeka, Inc. v. U. S. D. 501, Shawnee County, 227 Kan. 529, 608 P.2d 920 (1980).
Tex.—South Texas Water Authority v. Lomas, 223 S.W.3d 304 (Tex. 2007).
As to the separation-of-powers doctrine, generally, see § 272.
As to the effect of the separation-of-powers doctrine in determining the nature and scope of the powers of governmental departments, see § 384.

12 Conn.—ABC, LLC v. State Ethics Com'n, 264 Conn. 812, 826 A.2d 1077 (2003).
N.C.—Wise v. Harrington Grove Community Ass'n, Inc., 357 N.C. 396, 584 S.E.2d 731 (2003).
N.D.—Saefke v. Stenehjem, 2003 ND 202, 673 N.W.2d 41 (N.D. 2003).
Ohio—State ex rel. Essig v. Blackwell, 103 Ohio St. 3d 481, 2004-Ohio-5586, 817 N.E.2d 5 (2004).

13 Ill.—Berlin v. Sarah Bush Lincoln Health Center, 179 Ill. 2d 1, 227 Ill. Dec. 769, 688 N.E.2d 106 (1997).

14 La.—Baxter v. Scott, 860 So. 2d 535 (La. 2003).
Mass.—Answer of the Justices to the Governor, 444 Mass. 1201, 829 N.E.2d 1111 (2005).
N.Y.—Saratoga County Chamber of Commerce, Inc. v. Pataki, 100 N.Y.2d 801, 766 N.Y.S.2d 654, 798 N.E.2d 1047 (2003).

Hypothetical questions

(1) Federal courts may not decide questions that cannot affect rights of litigants in case before them or give opinions advising what the law would be on hypothetical state of facts.
U.S.—Chafin v. Chafin, 133 S. Ct. 1017, 185 L. Ed. 2d 1 (2013).
(2) The state supreme court does not issue advisory opinions or answer hypothetical questions.
Okla.—Scott v. Peterson, 2005 OK 84, 126 P.3d 1232 (Okla. 2005).
(3) The supreme court decides actual cases, not hypothetical ones.
N.H.—State v. Kelly, 159 N.H. 390, 986 A.2d 575 (2009).

Moot questions

(1) The strong judicial policy against giving advisory opinions dictates that courts refrain from adjudicating moot questions.

Utah—Richards v. Baum, 914 P.2d 719 (Utah 1996).

(2) Generally, a court of review will not consider moot or abstract questions or render advisory decisions; however, a reviewing court may review otherwise moot issues pursuant to the public-interest exception to the mootness doctrine.

Ill.—In re Robert S., 213 Ill. 2d 30, 289 Ill. Dec. 648, 820 N.E.2d 424 (2004).

End of Document

16 C.J.S. Constitutional Law § 391

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

1. In General

§ 391. Delegation of powers

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2570 to 2574

Unless clearly authorized by law, the judiciary cannot delegate its powers, duties, and functions.

Unless clearly authorized by law,[1] the judiciary cannot delegate its powers, duties, and functions.[2] This rule has been applied in connection with various proceedings and powers, duties, and functions,[3] such as divorce proceedings[4] and judicial functions and equitable powers of supervision over trusts.[5] The general rule also applies to criminal matters[6] such as the issuance of a search warrant,[7] the determination of the amount of restitution to be made to an injured party,[8] sentencing,[9] or the fixing of terms and conditions of probation.[10]

On the other hand, there is no improper delegation of judicial power in imposing a sentence in accordance with a recommendation by a state's attorney,[11] in considering information presented by witnesses or recommendations presented by attorneys as long as the judge makes the final sentencing decision,[12] or in conferring authority to supervise the carrying out of the conditions of the suspension of a sentence.[13] Also, Article III courts are not prohibited from using nonjudicial officers to support judicial functions as long as that judicial officer retains and exercises ultimate responsibility.[14] The most important

limitation on the trial court's power to delegate its sentencing authority is that a probation officer may not decide the nature or extent of the punishment imposed upon a probationer; this limitation extends not only to the length of a prison term imposed but also to the conditions of probation or supervised release.[15]

CUMULATIVE SUPPLEMENT

Cases:

To determine whether the district court, in imposing a sentence, has unlawfully delegated its judicial authority to the Probation Office, court focuses on the language employed by the district court. United States v. Degroate, 940 F.3d 167 (2d Cir. 2019).

Special condition of supervised release imposed on narcotics offender, that he undergo substance abuse treatment "as deemed necessary and approved by the Probation Office," was clearly or obviously erroneous, as required to be redressable on "plain error" review, as creating ambiguity as to whether district court had impermissibly delegated to the Probation Office authority to set conditions of supervised release. United States v. Barber, 865 F.3d 837 (5th Cir. 2017).

To determine whether a condition of supervised release violates the rule against delegating Article III power, the Court of Appeals distinguishes between permissible conditions that merely task the probation officer with performing ministerial acts or support services related to the punishment imposed and impermissible delegations that allow the officer to decide the nature or extent of the defendant's punishment. U.S. Const. art. 3, § 2, cl. 1. United States v. Lee, 950 F.3d 439 (7th Cir. 2020).

[END OF SUPPLEMENT]

Footnotes

1 Ill.—People v. Love, 83 Ill. App. 3d 948, 39 Ill. Dec. 494, 404 N.E.2d 1085 (3d Dist. 1980).

2 Ariz.—In re Santa Cruz, 8 Ariz. App. 349, 446 P.2d 253 (1968).
Cal.—In re Travis J., 222 Cal. App. 4th 187, 165 Cal. Rptr. 3d 635 (1st Dist. 2013).
Del.—A. L. W. v. J. H. W., 416 A.2d 708 (Del. 1980).
Fla.—State v. Leyva, 65 So. 3d 1137 (Fla. 3d DCA 2011).
Haw.—Alakai Na Keiki, Inc. v. Matayoshi, 127 Haw. 263, 277 P.3d 988, 280 Ed. Law Rep. 450 (2012).
Mo.—Pearson v. Koster, 367 S.W.3d 36 (Mo. 2012).
As to inherent powers of the courts, see § 387.
Well-defined limits
There are well-defined limits beyond which a district court may not properly proceed in delegating certain functions.
U.S.—Armstrong v. O'Connell, 416 F. Supp. 1325 (E.D. Wis. 1976).
Inherent powers
Inherent powers of the courts are not subject to delegation to committees and representatives and, although these agencies may be utilized for investigation or fact finding purposes and to make recommendations, the final decision must rest with the court.
Neb.—Noffsinger v. Nebraska State Bar Ass'n, 261 Neb. 184, 622 N.W.2d 620 (2001).

3 Cal.—Reaves v. Superior Court, 22 Cal. App. 3d 587, 99 Cal. Rptr. 156 (3d Dist. 1971).
Colo.—C. C. C. v. District Court for Fourth Judicial Dist., 188 Colo. 437, 535 P.2d 1117 (1975).
Iowa—State v. Ochoa, 792 N.W.2d 260 (Iowa 2010).
N.Y.—Brown v. Brown, 71 Misc. 2d 818, 337 N.Y.S.2d 465 (Sup 1972), order aff'd, 39 A.D.2d 897, 334 N.Y.S.2d 1005 (1st Dep't 1972).

4 Colo.—Gelfond v. District Court in and for Second Judicial Dist., 180 Colo. 95, 504 P.2d 673 (1972).

Kan.—Johnson v. Johnson, 219 Kan. 190, 547 P.2d 360 (1976).

S.D.—Christensen v. Christensen, 85 S.D. 653, 190 N.W.2d 62 (1971).

5 Ind.—Morthland v. Lincoln Nat. Life Ins. Co., 216 Ind. 689, 25 N.E.2d 325 (1940).

6 N.J.—State v. Hogan, 133 N.J.L. 59, 42 A.2d 562 (N.J. Ct. Err. & App. 1945).

7 Ala.—Mount v. State, 45 Ala. App. 244, 228 So. 2d 857 (Crim. App. 1969).

8 Fla.—Fletcher v. State, 405 So. 2d 748 (Fla. 2d DCA 1981).

Ill.—People v. Love, 83 Ill. App. 3d 948, 39 Ill. Dec. 494, 404 N.E.2d 1085 (3d Dist. 1980).

Pa.—Com. v. Seminko, 297 Pa. Super. 418, 443 A.2d 1192 (1982).

Wyo.—Aldridge v. State, 956 P.2d 341 (Wyo. 1998).

Terms of restitution

(1) The district court did not have authority to delegate to a probation officer the determination of the timing of the defendant's restitution installment payments.

U.S.—U.S. v. Graham, 72 F.3d 352 (3d Cir. 1995).

(2) The sentencing court is not permitted to delegate to members of its administrative staff, including a probation officer, the specification of a restitution payment schedule; how much the defendant owes and the extent to which payments may be deferred are decisions for the judge.

U.S.—U.S. v. Ahmad, 2 F.3d 245 (7th Cir. 1993).

(3) When a court orders restitution, it must set forth what amount is to be paid, and the duty to make such a finding may not be delegated to the probation department.

N.Y.—People v. Beaudoin, 195 A.D.2d 996, 600 N.Y.S.2d 558 (4th Dep't 1993).

9 Minn.—State v. Ford, 539 N.W.2d 214 (Minn. 1995).

10 U.S.—Whitehead v. U.S., 155 F.2d 460 (C.C.A. 6th Cir. 1946).

11 Ill.—People v. Brouhard, 53 Ill. 2d 109, 290 N.E.2d 206 (1972).

As to the power of the Executive Branch in connection with sentencing and punishment, see § 463.

12 Or.—State v. Dodson, 25 Or. App. 859, 551 P.2d 484 (1976).

13 Okla.—Johnson v. State, 1977 OK CR 255, 568 P.2d 355 (Okla. Crim. App. 1977).

14 U.S.—Bucci v. U.S., 662 F.3d 18 (1st Cir. 2011).

15 U.S.—U.S. v. Heckman, 592 F.3d 400 (3d Cir. 2010).

End of Document

16 C.J.S. Constitutional Law § 392

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

2. Political Questions

a. In General

§ 392. Province of judiciary as to political questions, generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2580, 2582, 2587

Except to the extent that such power is conferred on the courts by constitutional or statutory provisions, it is not within the province of the judiciary to determine political questions.

Under the political-question doctrine,[1] which is primarily a function of the doctrine of separation of powers,[2] it is not within the province of the judiciary to determine political questions[3] except to the extent that power to deal with such questions has been conferred on the courts by express constitutional[4] or statutory[5] provisions. The political-question doctrine excludes from judicial review those controversies which revolve around policy choices and value determinations constitutionally committed for resolution to the Legislative Branch or the confines of the Executive Branch.[6] Whether a controversy so directly implicates the primary authority of the Legislative or Executive Branch, such that a court is not a proper forum for its resolution, is a determination that must be made on a case-by-case inquiry.[7]

The doctrine is based on constitutional provisions relating to the distribution of powers among the branches of government,[8] and it is as a function of the separation of powers that political questions are not determinable by the judiciary.[9] Where the adjudication of the matter would tend to violate the doctrine of separation of powers, it is deemed political in nature and the court should abstain from its resolution.[10]

The courts cannot serve as political overseers of the executive or Legislative Branches, weighing the costs and benefits of competing political ideas or the wisdom of the executive or Legislative Branches in taking certain actions but may determine only whether some constitutional provision has been violated by an act or omission of the executive or Legislative Branch.[11] Thus, the limitations on judicial review imposed by the political-question doctrine apply only when the court is faced with a challenge to action by a coordinate branch of the government[12] and not where the issue involved falls within the traditional role accorded courts to interpret the law or constitutional provisions.[13] A statute providing for judicial review does not override the Constitution's requirement that federal courts refrain from deciding political questions.[14]

The political-question doctrine limits the exercise, not the existence, of judicial power; thus, even though a dispute may constitutionally be subject to judicial power, if a political question is present, a court should decline to reach the merits.[15] On the other hand, the simple fact that a conflict exists between the legislative and Executive Branches of government does not preclude judicial resolution under the political-question doctrine,[16] and the fact that a case is viewed as a political case, or involves political controversy, does not mean that it presents only political questions beyond the jurisdiction or proper role of the courts.[17]

As far as the political-question doctrine applies to the federal courts, whether a political question is present and the court lacks jurisdiction are issues committed to federal law.[18] The doctrine involves the relationship between the judiciary and the coordinate branches of the federal government and not the federal judiciary's relationship to the states,[19] and the doctrine has nothing to do with the power of the federal judiciary to review actions of the state legislature or any other branch of state government.[20]

Justiciability.

The political-question doctrine is a facet of the broader concept of justiciability,[21] and it is as a function of the separation of powers that political questions are nonjusticiable.[22] When a court concludes that an issue presents a nonjusticiable political question, it will decline to address the merits of that issue.[23] However, the mere fact that a suit seeks protection of a political right does not mean it presents a nonjusticiable political question,[24] and the fact that a case involves political issues is not determinative of the need for courts to defer to another branch of government on political question grounds.[25] Rather, a controversy is a nonjusticiable political question where there is a textually demonstrable constitutional commitment of the issue to a coordinate political department or where there is a lack of judicially discoverable and manageable standards for resolving the controversy.[26]

CUMULATIVE SUPPLEMENT

Cases:

Although it is the province and duty of the judicial department to say what the law is, sometimes the law is that the judicial department has no business entertaining the claim of unlawfulness, because the question is entrusted to one of the political branches or involves no judicially enforceable rights; in such case, the claim is said to present a political question and to be nonjusticiable, that is, outside the courts competence and therefore beyond the courts jurisdiction. Rucho v. Common Cause, 139 S. Ct. 2484 (2019).

Complaint by challengers to Department of Education's emergency order as to reopening schools in light of COVID-19 pandemic presented non-justiciable political question, where court could not decide whether State met its obligation to provide for safe and secure schools unless it made policy determinations reserved for executive branch and school districts, could not determine whether State actors, through delegated emergency authority, met executive's statutory obligation to address emergency presented by pandemic, and no judicially discoverable or manageable standards existed for trial court to resolve questions raised by challenger's constitutional claims. Fla. Const. art. 9, § 1(a); Fla. Stat. Ann. § 252.36(1)(a). DeSantis v. Florida Education Association, 306 So. 3d 1202 (Fla. 1st DCA 2020).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Hackbart v. Cincinnati Bengals, Inc., 601 F.2d 516, 4 Fed. R. Evid. Serv. 1042 (10th Cir. 1979).

2 U.S.—Wu Tien Li-Shou v. U.S., 777 F.3d 175 (4th Cir. 2015); Corrie v. Caterpillar, Inc., 503 F.3d 974 (9th Cir. 2007); El-Shifa Pharmaceutical Industries Co. v. U.S., 607 F.3d 836 (D.C. Cir. 2010).
As to separation of powers, see § 384.

3 U.S.—Powell v. McCormack, 395 U.S. 486, 89 S. Ct. 1944, 23 L. Ed. 2d 491 (1969); Callas' Estate v. U.S., 682 F.2d 613 (7th Cir. 1982).
Pa.—Com. v. Bucks County, 8 Pa. Commw. 295, 302 A.2d 897 (1973).
Exception to obligation to decide cases
In general, the judiciary has a responsibility to decide cases properly before it, even those it would gladly avoid, but there is a narrow exception to that rule, known as the "political question" doctrine.
U.S.—Zivotofsky ex rel. Zivotofsky v. Clinton, 132 S. Ct. 1421, 182 L. Ed. 2d 423, 75 A.L.R. Fed. 2d 637 (2012).
Characteristic of political question
(1) A controversy involves a "political question," such that a court lacks the authority to decide the dispute before it, where there is a textually demonstrable constitutional commitment of the issue to a coordinate political department, or a lack of judicially discoverable and manageable standards for resolving it.
U.S.—Zivotofsky ex rel. Zivotofsky v. Clinton, 132 S. Ct. 1421, 182 L. Ed. 2d 423, 75 A.L.R. Fed. 2d 637 (2012).
(2) The features characterizing a case raising a nonjusticiable political question are: a textually demonstrable constitutional commitment of the issue to a coordinate political department or a lack of judicially discoverable or manageable standards for resolving it; the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; the impossibility of a court's undertaking an independent resolution without expressing a lack of the respect due to coordinate branches of government; an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.
U.S.—U.S. v. Munoz-Flores, 495 U.S. 385, 110 S. Ct. 1964, 109 L. Ed. 2d 384 (1990).
(3) The six factors that render a case nonjusticiable under the political-question doctrine are a textually demonstrable constitutional commitment of the issue to a coordinate political department, a lack of judicially discoverable and manageable standards for resolving it, the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion, the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government, an unusual need for unquestioning adherence to a political decision already made, and the potentiality of embarrassment from multifarious pronouncements by various departments on one question.
U.S.—Ralls Corp. v. Committee on Foreign Inv. in U.S., 758 F.3d 296 (D.C. Cir. 2014).
Colo.—Kerr v. Hickenlooper, 744 F.3d 1156 (10th Cir. 2014).
Courts are ill-equipped

Though courts are capable of making refined and exacting factual inquiries, they are inherently ill-equipped to make decisions based on highly political judgments.

U.S.—Bartlett v. Strickland, 556 U.S. 1, 129 S. Ct. 1231, 173 L. Ed. 2d 173, 51 A.L.R. Fed. 2d 709 (2009).

4 Ga.—Thompson v. Talmadge, 201 Ga. 867, 41 S.E.2d 883 (1947).

5 N.D.—State v. McLean, 35 N.D. 203, 159 N.W. 847 (1916).

6 U.S.—Japan Whaling Ass'n v. American Cetacean Soc., 478 U.S. 221, 106 S. Ct. 2860, 92 L. Ed. 2d 166 (1986).

7 Conn.—Nielsen v. Kezer, 232 Conn. 65, 652 A.2d 1013 (1995).

8 U.S.—Occidental of Umm al Qaywayn, Inc. v. A Certain Cargo of Petroleum Laden Aboard Tanker Dauntless Colocotronis, 577 F.2d 1196 (5th Cir. 1978); U.S. v. Berrigan, 283 F. Supp. 336 (D. Md. 1968).

9 U.S.—Dickson v. Ford, 521 F.2d 234 (5th Cir. 1975); Metzenbaum v. Federal Energy Regulatory Commission, 675 F.2d 1282 (D.C. Cir. 1982); Rappenecker v. U.S., 509 F. Supp. 1024 (N.D. Cal. 1980).

As to the separation-of-powers doctrine, generally, see § 272.

As to the effect of the separation-of-powers doctrine in determining the nature and scope of the powers of governmental departments, see § 384.

10 Conn.—Board of Educ. of Town and Borough of Naugatuck v. Town and Borough of Naugatuck, 257 Conn. 409, 778 A.2d 862, 156 Ed. Law Rep. 1110 (2001).

11 Mich.—Straus v. Governor, 459 Mich. 526, 592 N.W.2d 53 (1999).

12 U.S.—Gewertz v. Jackman, 467 F. Supp. 1047, 4 Fed. R. Evid. Serv. 816 (D.N.J. 1979).

13 U.S.—Narragansett Tribe of Indians v. Southern Rhode Island Land Development Corp., 418 F. Supp. 798 (D.R.I. 1976); Sioux Val. Empire Elec. Ass'n, Inc. v. Butz, 367 F. Supp. 686 (D.S.D. 1973), judgment aff'd, 504 F.2d 168 (8th Cir. 1974).

14 U.S.—El-Shifa Pharmaceutical Industries Co. v. U.S., 607 F.3d 836 (D.C. Cir. 2010).

15 U.S.—Atlee v. Laird, 347 F. Supp. 689 (E.D. Pa. 1972), judgment aff'd, 411 U.S. 911, 93 S. Ct. 1545, 36 L. Ed. 2d 304 (1973).

Questions involving perceived conflict

Questions involving perceived conflict between the legislative and Executive Branches are, by and large, political questions which do not present issues with which the court can, or should, concern itself.

W. Va.—State ex rel. League of Women Voters of West Virginia v. Tomblin, 209 W. Va. 565, 550 S.E.2d 355 (2001).

16 U.S.—Consumer Energy Council of America v. Federal Energy Regulatory Commission, 673 F.2d 425 (D.C. Cir. 1982), judgment aff'd, 463 U.S. 1216, 103 S. Ct. 3556, 77 L. Ed. 2d 1402, 77 L. Ed. 2d 1403, 77 L. Ed. 2d 1413 (1983); U. S. v. American Tel. & Tel. Co., 567 F.2d 121 (D.C. Cir. 1977).

17 U.S.—U. S. v. American Tel. & Tel. Co., 567 F.2d 121 (D.C. Cir. 1977).

18 U.S.—Occidental of Umm al Qaywayn, Inc. v. A Certain Cargo of Petroleum Laden Aboard Tanker Dauntless Colocotronis, 577 F.2d 1196 (5th Cir. 1978).

19 U.S.—McInnis v. Shapiro, 293 F. Supp. 327 (N.D. Ill. 1968), judgment aff'd, 394 U.S. 322, 89 S. Ct. 1197, 22 L. Ed. 2d 308 (1969); Blount v. Mandel, 400 F. Supp. 1190 (D. Md. 1975); White v. Snear, 313 F. Supp. 1100 (E.D. Pa. 1970).

20 U.S.—Blount v. Mandel, 400 F. Supp. 1190 (D. Md. 1975).

21 U.S.—Sneaker Circus, Inc. v. Carter, 566 F.2d 396 (2d Cir. 1977); Harris v. Kellogg Brown & Root Services, Inc., 724 F.3d 458 (3d Cir. 2013), petition for certiorari filed, 135 S. Ct. 1152, 190 L. Ed. 2d 910 (2015); Harrington v. Bush, 553 F.2d 190 (D.C. Cir. 1977).

22 U.S.—Dickson v. Ford, 521 F.2d 234 (5th Cir. 1975); Rappenecker v. U.S., 509 F. Supp. 1024 (N.D. Cal. 1980); Carey v. Klutznick, 508 F. Supp. 404 (S.D. N.Y. 1980).

As to the necessity of case or controversy to the jurisdiction of the federal courts, see § 390.

23 U.S.—U.S. Dept. of Commerce v. Montana, 503 U.S. 442, 112 S. Ct. 1415, 118 L. Ed. 2d 87 (1992).

24 Conn.—Nielsen v. Kezer, 232 Conn. 65, 652 A.2d 1013 (1995).

25 Mich.—House Speaker v. Governor, 443 Mich. 560, 506 N.W.2d 190 (1993).

26 U.S.—Nixon v. U.S., 506 U.S. 224, 113 S. Ct. 732, 122 L. Ed. 2d 1 (1993).

End of Document

16 C.J.S. Constitutional Law § 393

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

§ 393. Elections

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2584 to 2586

Matters relating to or affecting elections generally are political questions, and matters relating to political parties, primaries, and the management of party affairs are usually regarded as political questions and outside the range of judicial consideration.

Matters relating to or affecting elections generally are, in the absence of controlling constitutional or statutory provisions to the contrary, political questions and, as such, are not questions for the judiciary.[1] Thus, subject to express constitutional restrictions, matters relating to the holding of elections[2] and determining their results,[3] including contests,[4] have been held be outside the range of judicial action.

Questions involving the electoral process that are not purely political in nature, however, may be appropriate for judicial relief.[5] Furthermore, with respect to the political-question doctrine, the fact that matters related to a state's, or even the federal

government's, elective process are implicated by a court's resolution of a question is not necessarily sufficient to justify its withholding decision of the question.[6]

In the absence of legislation prescribing what constitutes a lawful election, whether an election of public officers has been in accordance with the law is for the judiciary.[7] Moreover, where the legislative department has by statute prescribed election procedure in a given situation, the judiciary may determine whether a particular election has been in conformity with such statute[8] and, particularly, whether such statute has been applied in a way to deny or transgress on constitutional or statutory rights of a citizen, taxpayer, and voter.[9]

Under a statute conferring on the judiciary power to determine contests of elections, that branch of government may constitutionally exercise the power thus conferred.[10] It also may be within the power of the judiciary to inquire into, and pass on, the sufficiency of a petition for a referendum election[11] and the performance by officers of ministerial functions in connection with elections.[12]

Matters relating to political parties, primaries, and the management of party affairs are usually regarded as political questions and outside the range of judicial consideration.[13] The declarations and qualifications for nomination of candidates for public office likewise ordinarily belong to the political branch of the government.[14] On the other hand, the question of whether the one person, one vote principle should be applied to a state political party convention system is not a nonjusticiable political question.[15] Moreover, the political-question doctrine does not preclude judicial consideration of a case challenging election laws making it virtually impossible for a political party not currently on the ballot to be placed on the ballot.[16]

CUMULATIVE SUPPLEMENT

Cases:

Action challenging constitutionality of state's rules for voting by mail as applied during COVID-19 pandemic did not present nonjusticiable political question; resolution of plaintiffs' claims would not require court to consider prudence of state's plans for combating pandemic when holding elections, only whether challenged provisions ran afoul of Constitution. Texas Democratic Party v. Abbott, 961 F.3d 389 (5th Cir. 2020).

Issue of whether political party had to permit its members to seek its nomination by choosing either or both convention and signature process to be "qualified political party" under Utah law was not ripe for review, since there were multiple options available to party, there was no certainty or even likelihood as to what party's behavior would be, and declining to address remedy of violation that might never occur simply maintained status quo and did not significantly impair opposing party. U.S. Const. art. 3, § 2, cl. 1; Utah Code Ann. §§ 20A-9-101(12)(c), 20A-9-408(8)(b). Utah Republican Party v. Cox, 885 F.3d 1219 (10th Cir. 2018).

Non-justiciable political question was not involved in claim brought by Montana Democratic Party and others seeking declaratory judgment that act of Secretary of State certifying eligibility of Montana Green Party to nominate candidates for election to public offices was invalid due to noncompliance with statute governing minor parties' eligibility for primary election; claim asserted noncompliance with well-defined statutorily prescribed processes, Secretary had no discretion or authority to approve or certify sufficiency of Green Party qualification petition except in accordance with statutory processes, and people had no right to vote on candidates of political parties who had not qualified to nominate candidates in the manner provided by law. Mont. Const. art. 3, § 1; Mont. Const. art. 7, § 1; Mont. Code Ann. §§ 13-10-601(2), 13-10-601(2)(c), 13-27-303, 13-27-304, 13-27-305, 13-27-306, 13-27-307. Larson v. State By and Through Stapleton, 2019 MT 28, 394 Mont. 167, 434 P.3d 241 (2019).

If courts cannot resort to equity to mitigate a legislatively-prescribed removal from the ballot, they certainly should not resort to equity to force removal from the ballot when the legislature has not prescribed such a consequence. Reuther v. Delaware County Bureau of Elections, 205 A.3d 302 (Pa. 2019).

[END OF SUPPLEMENT]

Footnotes

1 Fla.—Wilson v. Dade County, 369 So. 2d 1002 (Fla. 3d DCA 1979).
Ohio—MacDonald v. Bernard, 1 Ohio St. 3d 85, 438 N.E.2d 410 (1982).
Tex.—Ellis v. Vanderslice, 486 S.W.2d 155 (Tex. Civ. App. Dallas 1972).
Vt.—In re Smith, 131 Vt. 24, 298 A.2d 823 (1972).

2 Ark.—Brown v. McDaniel, 244 Ark. 362, 427 S.W.2d 193 (1968).
Ohio—Harkins v. Timmer, 39 Ohio Misc. 145, 68 Ohio Op. 2d 368, 317 N.E.2d 422 (C.P. 1974).
Tex.—Williamson v. Kempf, 574 S.W.2d 845 (Tex. Civ. App. Texarkana 1978), writ refused n.r.e., (Mar. 28, 1979).

3 Ind.—State ex rel. Beaman v. Circuit Court of Pike County, 229 Ind. 190, 96 N.E.2d 671 (1951).

4 Ark.—Pendergrass v. Sheid, 241 Ark. 908, 411 S.W.2d 5 (1967).
Fla.—McPherson v. Flynn, 397 So. 2d 665 (Fla. 1981).
Tex.—Carter v. Tomlinson, 149 Tex. 7, 227 S.W.2d 795 (1950).

5 U.S.—Williams v. Rhodes, 393 U.S. 23, 89 S. Ct. 5, 21 L. Ed. 2d 24 (1968).
Facilitation of process
Tex.—Ellis v. Vanderslice, 486 S.W.2d 155 (Tex. Civ. App. Dallas 1972).
Renumbering of election subdistricts
The question of whether an election commissioner exceeded his statutorily delegated authority when he renumbered school board election subdistricts was not a political question, and thus, the trial court had jurisdiction to resolve the dispute, as the question involved interpretation of the statutes by which the legislature delegated authority to the election commissioner to adjust district boundaries.
Neb.—State ex rel. Steinke v. Lautenbaugh, 263 Neb. 652, 642 N.W.2d 132 (2002).
Right to vote
The question of the constitutionality of provisions requiring that those who wish to vote in any given year register each year was not purely political in nature, and the matter was appropriate for judicial relief.
U.S.—Beare v. Smith, 321 F. Supp. 1100 (S.D. Tex. 1971), decision aff'd, 498 F.2d 244 (5th Cir. 1974).

6 U.S.—Elrod v. Burns, 427 U.S. 347, 96 S. Ct. 2673, 49 L. Ed. 2d 547 (1976).

7 U.S.—Mountain States Legal Foundation v. Board of County Com'rs of Boulder County, Colo., 547 F. Supp. 121 (D. Colo. 1982).
Ga.—Thompson v. Talmadge, 201 Ga. 867, 41 S.E.2d 883 (1947).

8 Ohio—MacDonald v. Bernard, 1 Ohio St. 3d 85, 438 N.E.2d 410 (1982).

9 Ohio—MacDonald v. Bernard, 1 Ohio St. 3d 85, 438 N.E.2d 410 (1982).

10 Haw.—Akizaki v. Fong, 51 Haw. 354, 461 P.2d 221 (1969).

11 Or.—State ex rel. McNary v. Olcott, 62 Or. 277, 125 P. 303 (1912).

12 Ohio—MacDonald v. Bernard, 1 Ohio St. 3d 85, 438 N.E.2d 410 (1982).
Tex.—Williamson v. Kempf, 574 S.W.2d 845 (Tex. Civ. App. Texarkana 1978), writ refused n.r.e., (Mar. 28, 1979).

13 Fla.—Alexander v. Booth, 56 So. 2d 716 (Fla. 1952).
Ohio—State ex rel. McCurdy v. DeMaioribus, 9 Ohio App. 2d 280, 38 Ohio Op. 2d 336, 224 N.E.2d 353 (8th Dist. Cuyahoga County 1967).

14 Ala.—State v. Albritton, 251 Ala. 422, 37 So. 2d 640 (1948).
Ohio—Marlin v. Board of Election of Cuyahoga County, 68 Ohio L. Abs. 539, 119 N.E.2d 84 (Ct. App. 8th Dist. Cuyahoga County 1954).

15 U.S.—Maxey v. Washington State Democratic Committee, 319 F. Supp. 673 (W.D. Wash. 1970).
As to the one person, one vote principle, as mandated by the constitutional guarantee of equal protection of the law, see § 1428.

16 U.S.—Williams v. Rhodes, 393 U.S. 23, 89 S. Ct. 5, 21 L. Ed. 2d 24 (1968).

End of Document

16 C.J.S. Constitutional Law § 394

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

2. Political Questions

a. In General

§ 394. Executive conduct

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2590 to 2592

The activities of the United States, under the direction of the President, generally fall within the political question classification and are outside the sphere of judicial power.

The activities of the United States, under the direction of the President, generally fall within the political question classification and are outside the sphere of judicial power.[1] However, a matter involving activities of the Executive Branch is justiciable where the conduct is outside that which has been entrusted to the Executive Branch by the Federal Constitution.[2]

Similarly, the action of a state executive department in exercising executive functions lawfully entrusted to that department by a constitutional provision or legislative action cannot be passed on by the judiciary department.[3] The acts of the executive in the political field are binding on the courts,[4] and the courts will accept as conclusive executive pronouncements on whatever might be considered a political question.[5] However, where a provision of the state constitution allows the governor to make changes

in the organization of the Executive Branch, issues as to the validity of an executive order abolishing an existing department and establishing a new department constitute justiciable political questions.[6]

Standing considerations.

The doctrine of standing is a constitutional principle that prevents courts of law from undertaking tasks assigned to the political branches.[7] It is not the role of courts, but that of the political branches, to shape the institutions of government in such a fashion as to comply with the laws and constitutional requirements.[8]

Footnotes

1 U.S.—Chicago & Southern Air Lines v. Waterman S. S. Corp., 333 U.S. 103, 68 S. Ct. 431, 92 L. Ed. 568 (1948); Fahey v. O'Melveny & Myers, 200 F.2d 420 (9th Cir. 1952); American Motorcycle Ass'n v. Council on Environmental Quality, 520 F. Supp. 464 (D.D.C. 1981).

Federalization of National Guard

The decision that conditions exist requiring federalization of the National Guard to protect against domestic violence involves a political judgment into which the courts should not inquire.

U.S.—Smith v. U. S., 330 F. Supp. 867 (E.D. Mich. 1971).

National emergency

Although the courts will not normally review the essentially political questions surrounding declaration or continuance of a national emergency, they do not hesitate to review actions taken in response thereto or in reliance thereon.

U.S.—U. S. v. Yoshida Intern., Inc., 526 F.2d 560 (C.C.P.A. 1975).

Presidential negligence

A claim that the President was negligent in treating the seizure of a privately owned cargo vessel by Cambodian gunboats as illegal was a nonjusticiable political question.

U.S.—Rappenecker v. U.S., 509 F. Supp. 1024 (N.D. Cal. 1980).

2 U.S.—British Caledonian Airways Ltd. v. Bond, 665 F.2d 1153 (D.C. Cir. 1981).

Conn.—Maloney v. Pac, 183 Conn. 313, 439 A.2d 349 (1981).

Allegations of census mismanagement

U.S.—Carey v. Klutznick, 637 F.2d 834 (2d Cir. 1980); City of Philadelphia v. Klutznick, 503 F. Supp. 663 (E.D. Pa. 1980).

Enforcement of Senate subpoena

A proceeding on application by a Senate Committee to enforce a subpoena duces tecum served on the President presented a justiciable controversy despite a contention that it involved a political question.

U.S.—Senate Select Committee on Presidential Campaign Activities v. Nixon, 370 F. Supp. 521 (D.D.C. 1974), order aff'd, 498 F.2d 725 (D.C. Cir. 1974).

Invasion of privacy

The decision whether a citizen's privacy may constitutionally be invaded is not a political question entrusted to the executive; rather, it is a question of providing a bulwark against executive excess, a task which the Fourth Amendment deliberately allocated to the neutral officials of the judiciary.

U.S.—Zweibon v. Mitchell, 516 F.2d 594 (D.C. Cir. 1975).

3 Ga.—Morris v. Peters, 203 Ga. 350, 46 S.E.2d 729 (1948).

Adherence to funding suggestions

The possibility that state officers, offices, and agencies feel constrained to adhere to the funding suggestions contained in the budget digest raises a political question with which the Executive Branch, not the courts, must deal.

W. Va.—State ex rel. League of Women Voters of West Virginia v. Tomblin, 209 W. Va. 565, 550 S.E.2d 355 (2001).

4 U.S.—The Maret, 2 V.I. 418, 145 F.2d 431 (C.C.A. 3d Cir. 1944).

5 U.S.—Sullivan v. State of Sao Paulo, 122 F.2d 355 (C.C.A. 2d Cir. 1941).

6 Mich.—House Speaker v. Governor, 443 Mich. 560, 506 N.W.2d 190 (1993).

7 Mich.—Lee v. Macomb County Bd. of Com'rs, 464 Mich. 726, 629 N.W.2d 900 (2001) (overruled on other grounds by, Lansing Schools Educ. Ass'n v. Lansing Bd. of Educ., 487 Mich. 349, 792 N.W.2d 686, 263 Ed. Law Rep. 360 (2010)).

8 Mich.—Lee v. Macomb County Bd. of Com'rs, 464 Mich. 726, 629 N.W.2d 900 (2001) (overruled on other grounds by, Lansing Schools Educ. Ass'n v. Lansing Bd. of Educ., 487 Mich. 349, 792 N.W.2d 686, 263 Ed. Law Rep. 360 (2010)).

Challenge by legislators to actions of Executive Branch

The state supreme court's concern over standing to sue is particularly acute when state legislators challenge actions undertaken by the Executive Branch; without the standing requirement, the Judicial Branch would be too easily coerced into resolving political disputes between the executive and Legislative Branches, an arena in which courts are naturally reluctant to intrude.

Ariz.—Bennett v. Napolitano, 206 Ariz. 520, 81 P.3d 311 (2003).

End of Document

16 C.J.S. Constitutional Law § 395

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

2. Political Questions

a. In General

§ 395. Public offices and officers

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2590 to 2592

Creating and staffing public offices and positions, and the qualifications of public officers, including members of the legislature, are political matters with which the courts cannot interfere.

Creating and staffing public offices and positions,[1] and the qualifications of public officers,[2] including members of the legislature,[3] are political matters with which the courts cannot interfere. Qualifications for public office required by a constitutional provision cannot be added to by the judiciary.[4] Moreover, under constitutional provisions that each house of the legislature is to judge the qualifications and elections of its own members, it is not for the judiciary to try title to a seat in the legislature.[5] Nonjusticiable political questions also include the number of houses of the legislature, the number of members, the length of terms, and the frequency of sessions.[6]

On the other hand, the mere fact that an action involves a public office or officer does not mean that the issue presented is a nonjusticiable political question[7] as where the claim falls within a traditional role accorded the courts to interpret or enforce the

law.[8] Moreover, constitutional provisions requiring the legislature to judge the qualifications of its members do not divest the judiciary of its power to determine whether a particular individual is eligible to hold office as a member of the legislature.[9]

Under constitutional provisions requiring that executive appointments to executive office be confirmed by one of the houses of the legislature, the right of a particular appointee to such office and whether the appointee has been confirmed as required present questions for the determination of the judiciary.[10] However, the judiciary has no power to pass on the eligibility of a candidate for office in the executive department where the constitution has withdrawn the question from the courts.[11] In any event, the judicial department cannot undertake to ascertain what particular individual is qualified or entitled to hold a particular public office, under the guise of determining an incumbent's right to office.[12]

Removal from public office.

Questions as to the removal or recall of a public officer are usually of a political character and not within the proper scope of the judiciary[13] as are questions as to the forfeiture of offices.[14] On the other hand, questions as to removal or exclusion of a public officer are justiciable where constitutional rights are alleged to have been violated.[15] Moreover, whether proceedings for the recall of a public officer have been conducted in conformity with constitutional and statutory provisions governing the subject is a matter for judicial determination.[16]

CUMULATIVE SUPPLEMENT

Cases:

Action alleging that the President violated the Foreign Emoluments Clause, which barred the receipt of emoluments without the consent of Congress, did not present a nonjusticiable political question, under a theory that Congress was the only political branch with the power to consent to violations of the Foreign Emoluments Clause and Congress therefore was the appropriate body to determine whether, and to what extent, the President's conduct unlawfully infringed on that power; in the undisputed absence of Congressional consent, the President had violated the Clause if, as alleged in the complaint, he had accepted what the Constitution described as emoluments, based on adopting policies and practices that allegedly incentivized foreign government officials to patronize restaurant, hotel, and event-space properties owned or operated by the President's businesses. U.S. Const. art. 1, § 9, cl. 8. Citizens for Responsibility and Ethics in Washington v. Trump, 953 F.3d 178 (2d Cir. 2019), as amended, (Mar. 20, 2020).

Action alleging the President's violation of Foreign Emoluments Clause, which barred the receipt of emoluments without the consent of Congress, did not present a nonjusticiable political question, under a theory that Congress was the only political branch with the power to consent to violations of the Foreign Emoluments Clause and Congress therefore was the appropriate body to determine whether, and to what extent, the President's conduct unlawfully infringed on that power; in the undisputed absence of Congressional consent, the President had violated the Clause if, as alleged in the complaint, he had accepted what the Constitution described as emoluments, based on adopting policies and practices that allegedly incentivized foreign government officials to patronize restaurant, hotel, and event-space properties owned or operated by the President's businesses. U.S. Const. art. 1, § 9, cl. 8. Citizens for Responsibility and Ethics in Washington v. Trump, 939 F.3d 131 (2d Cir. 2019).

State legislators' petition for quo warranto, seeking to enjoin governor from appointing successor to the office held by an associate justice of the Supreme Court, which office would become vacant approximately three months after governor left his own office, was not a political question unsuitable for judicial resolution; there was no textually demonstrable constitutional commitment that the issue raised be resolved by any branch of government other than the judiciary, nor was there a lack of judicial standards to resolve issue, and it was not impossible for court to resolve issue while giving due respect to the coordinate

branches of government and avoiding policy decisions of a kind reserved for nonjudicial discretion. Turner v. Shumlin, 2017 VT 2, 163 A.3d 1173 (Vt. 2017).

[END OF SUPPLEMENT]

Footnotes

1 Kan.—Leek v. Theis, 217 Kan. 784, 539 P.2d 304 (1975).
N.Y.—Caso v. Coffey, 83 Misc. 2d 614, 372 N.Y.S.2d 892 (Sup 1975).

2 Ark.—Roper v. Rodgers, 249 Ark. 416, 459 S.W.2d 419 (1970).
Mich.—Schweitzer v. Clerk for City of Plymouth, 381 Mich. 485, 164 N.W.2d 35 (1969).

3 Ala.—In re Opinion of the Justices, 254 Ala. 160, 47 So. 2d 586 (1950).
Fla.—McPherson v. Flynn, 397 So. 2d 665 (Fla. 1981).
Wyo.—State ex rel. Schieck v. Hathaway, 493 P.2d 759 (Wyo. 1972).

4 Mich.—Attorney General ex rel. Cook v. O'Neill, 280 Mich. 649, 274 N.W. 445 (1937).

5 U.S.—Roudebush v. Hartke, 405 U.S. 15, 92 S. Ct. 804, 31 L. Ed. 2d 1 (1972).
Iowa—State ex rel. Turner v. Scott, 269 N.W.2d 828 (Iowa 1978).
Mo.—State on Information of Danforth v. Banks, 454 S.W.2d 498 (Mo. 1970).

6 U.S.—Butterworth v. Dempsey, 237 F. Supp. 302 (D. Conn. 1964).

7 U.S.—Local 2816, Office of Economic Opportunity Emp. Union, AFGE, AFL-CIO v. Phillips, 360 F. Supp. 1092 (N.D. Ill. 1973).

8 U.S.—Powell v. McCormack, 395 U.S. 486, 89 S. Ct. 1944, 23 L. Ed. 2d 491 (1969); Local 2677, Am. Federation of Government Emp. v. Phillips, 358 F. Supp. 60, 17 Fed. R. Serv. 2d 369 (D.D.C. 1973).
Mo.—Crain v. Missouri State Employees' Retirement System, 613 S.W.2d 912 (Mo. Ct. App. W.D. 1981).

9 La.—Daley v. Morial, 205 So. 2d 213 (La. Ct. App. 4th Cir. 1967), writ refused, 251 La. 679, 205 So. 2d 442 (1967).
N.J.—Wilentz ex rel. Golat v. Stanger, 129 N.J.L. 606, 30 A.2d 885 (N.J. Ct. Err. & App. 1943).

10 Tex.—Denison v. State ex rel. Allred, 122 Tex. 459, 61 S.W.2d 1022 (1933).

11 Tex.—Kilday v. State ex rel. Candler, 75 S.W.2d 148 (Tex. Civ. App. San Antonio 1934).

12 R.I.—Bressler v. Board of Trustees of State Colleges, 67 R.I. 269, 21 A.2d 559 (1941).

13 Ala.—In re Opinion of the Justices, 254 Ala. 160, 47 So. 2d 586 (1950).
Iowa—State ex rel. Turner v. Scott, 269 N.W.2d 828 (Iowa 1978).

14 Or.—Ivancie v. Thornton, 250 Or. 550, 443 P.2d 612 (1968).

15 U.S.—Powell v. McCormack, 395 U.S. 486, 89 S. Ct. 1944, 23 L. Ed. 2d 491 (1969); Gewertz v. Jackman, 467 F. Supp. 1047, 4 Fed. R. Evid. Serv. 816 (D.N.J. 1979).
Or.—Ivancie v. Thornton, 250 Or. 550, 443 P.2d 612 (1968).
Procedural due process
Pa.—Sweeney v. Tucker, 473 Pa. 493, 375 A.2d 698 (1977).

16 Fla.—State v. Tedder, 106 Fla. 140, 143 So. 148 (1932).

16 C.J.S. Constitutional Law § 396

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

2. Political Questions

a. In General

§ 396. General welfare and economic policies

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2580, 2593

Matters pertaining to the general welfare and the wisdom of measures taken for the protection thereof constitute political questions which are outside the range of the judicial function.

Matters pertaining to the general welfare and the wisdom of measures taken for the protection thereof constitute political questions which are outside the range of the judicial function.[1] Accordingly, questions of economic policy are not matters for judicial determination.[2] However, the reluctance to allow the judiciary to invade the fields of the legislature in its determination of a political question of policy and of general welfare is without justification where the purpose sought to be performed is the discretion, purpose, and policy of private individuals and not that of the state.[3]

Footnotes

1 U.S.—Gonzalez v. People of Porto Rico, 51 F.2d 61 (C.C.A. 1st Cir. 1931).

Reluctance to interfere with Executive Branch

The judiciary is loath to interfere with the Executive Branch of government with respect to the administration and management of its affairs, allocation of its resources, and implementation and management of its various programs.

N.Y.—New York State Inspection, Sec. and Law Enforcement Employees, Dist. Council 82 v. Cuomo, 103 A.D.2d 312, 480 N.Y.S.2d 1 (2d Dep't 1984), order aff'd, 64 N.Y.2d 233, 485 N.Y.S.2d 719, 475 N.E.2d 90 (1984).

Development of energy sources

The decision as to the extent and nature of government participation in the development of energy sources is a political question for Congress.

U.S.—Crowther v. Seaborg, 312 F. Supp. 1205 (D. Colo. 1970).

Slum or blighted area

What constitutes a slum or blighted area within a housing act is a legislative question, which is political in nature and involves questions of public policy.

U.S.—Adair v. Nashville Housing Authority, 388 F. Supp. 481 (M.D. Tenn. 1974), judgment aff'd, 514 F.2d 38 (6th Cir. 1975).

2 Fla.—Whisnant v. Draughon, 129 Fla. 587, 176 So. 564 (1937).

Wis.—State ex rel. Martin v. Giessel, 252 Wis. 363, 31 N.W.2d 626 (1948).

3 Ohio—Belden v. Union Cent. Life Ins. Co., 24 Ohio Op. 151, 10 Ohio Supp. 12, 1942 WL 420 (C.P. 1942), aff'd, 73 Ohio App. 267, 28 Ohio Op. 434, 56 N.E.2d 177 (9th Dist. Summit County 1943), aff'd, 143 Ohio St. 329, 28 Ohio Op. 295, 55 N.E.2d 629 (1944).

End of Document

16 C.J.S. Constitutional Law § 397

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

§ 397. Public funds

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2580, 2593

Questions relating to public funds and their custody and expenditure may be regarded as political and of no concern of the courts.

Questions relating to public funds and their custody and expenditure may be regarded as political and of no concern of the courts.[1] Thus, for example, the allocation of public funds to support officers or positions is a legislative prerogative with which the judiciary has no right to interfere in the absence of specific authority from the legislature.[2] The legislature's power of appropriation includes the power to withhold appropriations, and a court ordinarily has no power to require the legislature to appropriate money.[3]

On the other hand, merely because a legislative action involves an exercise of the appropriations power, it is not immunized against judicial review because of the political-question doctrine,[4] at least where a politically delicate question between coordinate branches of the government is not involved.[5] Consequently, questions relating to public funds do not present political

questions where there is no textually demonstrable constitutional commitment of responsibility to control spending to the Executive Branch[6] and where there is no difficulty in discovering standards for resolving the issue.[7]

Whether a designated indebtedness for which the expenditure of public funds is sought is for a public purpose within constitutional requirements ultimately may be a question for the courts.[8]

Footnotes

1 U.S.—Cincinnati Soap Co. v. U.S., 301 U.S. 308, 57 S. Ct. 764, 81 L. Ed. 1122 (1937); Sparrow v. Gill, 304 F. Supp. 86 (M.D. N.C. 1969).

N.J.—Borough of Glassboro v. Byrne, 141 N.J. Super. 19, 357 A.2d 65 (App. Div. 1976).

No authority to compel appropriations

Under the state constitution, the judiciary has no general authority to compel appropriations or second-guess legislative spending decisions.

Cal.—Grossmont Union High School Dist. v. California Dept. of Educ., 169 Cal. App. 4th 869, 86 Cal. Rptr. 3d 890, 240 Ed. Law Rep. 307 (3d Dist. 2008).

Authorization of industrial development bonds

Ohio—Stark County v. Ferguson, 2 Ohio App. 3d 72, 440 N.E.2d 816 (5th Dist. Stark County 1981).

Lack of standards

Where an act provided no standards by which the court could determine whether the President's impounding of funds was a breach of executive discretion, an action seeking to compel the release of such funds involved a political question over which the court lacked jurisdiction.

U.S.—Housing Authority of City and County of San Francisco v. U.S. Dept. of Housing and Urban Development, 340 F. Supp. 654 (N.D. Cal. 1972).

What constitutes money as legal tender

Whether Congress has acted wisely or expediently in exercise of its powers to declare what is money, to regulate the value of money, and declare what is legal tender is political question that is not subject to judicial review.

Kan.—Allen v. Craig, 1 Kan. App. 2d 301, 564 P.2d 552 (1977).

2 Fla.—Petition of Florida Bar, 61 So. 2d 646 (Fla. 1952).

Inadequacy of school funding

Claim by boards of education in low-wealth school districts and individuals in those districts that funding and substance of state's educational system were constitutionally inadequate was not nonjusticiable political question and was subject to judicial review.

N.C.—Leandro v. State, 346 N.C. 336, 488 S.E.2d 249, 120 Ed. Law Rep. 304 (1997).

3 Cal.—Carmel Valley Fire Protection Dist. v. State, 25 Cal. 4th 287, 105 Cal. Rptr. 2d 636, 20 P.3d 533 (2001).

4 Mass.—Moe v. Secretary of Administration and Finance, 382 Mass. 629, 417 N.E.2d 387 (1981).

5 U.S.—McInnis v. Shapiro, 293 F. Supp. 327 (N.D. Ill. 1968), judgment aff'd, 394 U.S. 322, 89 S. Ct. 1197, 22 L. Ed. 2d 308 (1969); Parker v. Mandel, 344 F. Supp. 1068 (D. Md. 1972).

6 U.S.—City of New York v. Ruckelshaus, 358 F. Supp. 669 (D.D.C. 1973).

Mandamus action to remedy constitutional defect

A mandamus action seeking an order to compel the general assembly to enact a constitutional statutory scheme for county funding of the judicial system was not barred by the doctrine of separation of powers where the legislature had previously been directed by the state supreme court to act in order to remedy a constitutional defect in the scheme.

Pa.—Pennsylvania State Ass'n of County Com'rs v. Com., 545 Pa. 324, 681 A.2d 699 (1996).

As to the separation-of-powers doctrine, generally, see § 272.

7 U.S.—Housing Authority of City and County of San Francisco v. U.S. Dept. of Housing and Urban Development, 340 F. Supp. 654 (N.D. Cal. 1972); City of New York v. Ruckelshaus, 358 F. Supp. 669 (D.D.C. 1973).

8 Mass.—Opinions of the Justices, 320 Mass. 773, 67 N.E.2d 588, 165 A.L.R. 807 (1946).

End of Document

16 C.J.S. Constitutional Law § 398

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

2. Political Questions

a. In General

§ 398. Foreign relations and treaties

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2588

Questions pertaining to the foreign relations, affairs, or policies of the United States are generally deemed political in character and are, thus, not matters for judicial consideration.

The United States Constitution charges the political branches with the conduct of foreign affairs.[1] Since the conduct of foreign relations is a matter charged exclusively to the United States legislative and Executive Branches of the federal government,[2] questions pertaining to the foreign relations, affairs, or policies of the United States generally are deemed political in character and are, thus, under the political-question doctrine, not matters for judicial consideration.[3] For example, the status[4] and the recognition or nonrecognition,[5] of foreign governments are political questions and not for the judiciary. Similarly, questions as to who will be considered the proper diplomatic representative of a foreign state in its relations with the United States are not for the consideration of the judiciary.[6]

Other questions are political in character, and thus not within the scope of the judicial function, such as the necessity of foreign aid,[7] whether a state of war exists,[8] the propriety of military activities conducted abroad in the absence of a declaration of war,[9] whether property seized by the federal government in war time is being used for war purposes,[10] and the extent to which the power to prosecute violations of the laws of war must be exercised before peace is declared.[11] The judiciary also has no power to afford redress against a foreign sovereign in its sovereign capacity[12] or to compel the executive department or agencies thereof to intervene for such purpose,[13] to resolve territorial disputes between foreign sovereigns,[14] or to entertain suits against a foreign country without its consent.[15]

On the other hand, not every dispute touching foreign relations falls outside the province of the judiciary.[16] Nevertheless, when the conduct of the foreign relations of the country is at stake, courts are particularly discriminating in determining the propriety of considering such issues[17] and will be more hesitant to consider certain issues on the merits than when internal operations are involved.[18]

Factors to be considered.

In determining whether the political-question doctrine precludes judicial consideration of a case involving foreign relations or affairs, the factors to be considered are whether the potentially relevant information is, by its bulk, unmanageable for the court, might not be assembled, or should remain confidential,[19] whether the court can predict the international consequences of a decision,[20] the possible absence of any standards for the court to apply in reaching a judgment on the merits,[21] and the fact that the court is confronted with the task of reviewing an initial determination made by the political branches, individually or in concert, and committed by the federal constitution to those branches for resolution.[22]

Treaties.

Questions relating to, or arising under, treaties,[23] and the making of treaties,[24] usually are considered to be political and outside the range of the judicial function.

Trade agreements.

A challenge to procedures employed by the executive in concluding trade agreements, where such procedures are mandated by statute, rather than to the substance of such agreements, is justiciable and within the jurisdiction of the courts.[25]

CUMULATIVE SUPPLEMENT

Cases:

The political branches, not the Judiciary, have the responsibility and institutional capacity to weigh foreign-policy concerns. Hernandez v. Mesa, 140 S. Ct. 735 (2020).

Military's control over water services across Iraq and Afghanistan was plenary, weighing in favor of conclusion that contractor's decisions pertaining to water services were de facto military decisions unreviewable by court under political question doctrine; contractor had little discretion to choose how to provide potable water, it could not unilaterally bring bottled water from outside of Iraq, as it depended on military supply chain to transport anything, military directed frequency and quantity of potable water to be produced and dictated how much should be stored. In re: KBR, Inc., 893 F.3d 241 (4th Cir. 2018).

Insurance and asset management entities' action seeking judicial review of President's decision to exclude them from proceeds of claims settlement agreement between United States and Libya raised nonjusticiable political question; President had complete discretion and authority to implement settlement with Libya and to decide to whom settlement funds would be distributed, and there were no judicially discoverable and manageable standards for reviewing President's decision. Aviation & General Insurance Company, Ltd. v. United States, 882 F.3d 1088 (Fed. Cir. 2018).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Sea Hunt, Inc. v. Unidentified Shipwrecked Vessel or Vessels, 221 F.3d 634 (4th Cir. 2000).

2 U.S.—Simmons v. U.S., 406 F.2d 456 (5th Cir. 1969); Sarnoff v. Connally, 457 F.2d 809 (9th Cir. 1972); Matter of Naturalization of 68 Filipino War Veterans, 406 F. Supp. 931 (N.D. Cal. 1975).

3 U.S.—Chicago & Southern Air Lines v. Waterman S. S. Corp., 333 U.S. 103, 68 S. Ct. 431, 92 L. Ed. 568 (1948); Bancoult v. McNamara, 445 F.3d 427 (D.C. Cir. 2006); Holmes v. Laird, 459 F.2d 1211, 17 A.L.R. Fed. 705 (D.C. Cir. 1972).

National defense

U.S.—Epstein v. Resor, 421 F.2d 930, 7 A.L.R. Fed. 870 (9th Cir. 1970).

Conspiracy to fix crude oil prices

An action brought by United States gasoline retailers against oil production companies, alleging that the national oil companies, as well as their subsidiaries, conspired with Organization of Petroleum Exporting Countries (OPEC) member nations to fix prices of crude oil and refined petroleum products (RPPs) in the United States, primarily by limiting crude-oil production, presented nonjusticiable political questions; by adjudicating the case, the court would have been reexamining critical foreign policy decisions, including the Executive Branch's longstanding approach of managing relations with foreign oil-producing states through diplomacy rather than private litigation, and there were no judicially manageable standards for reviewing the conduct of the nation's foreign relations by the other two branches of the government.

U.S.—Spectrum Stores, Inc. v. Citgo Petroleum Corp., 632 F.3d 938 (5th Cir. 2011).

Destruction of foreign pharmaceutical plant

The political question doctrine barred judicial review of whether the President's decision to destroy a Sudanese pharmaceutical plant with missiles was mistaken or not justified, such that failure to compensate the plant's owners for their loss violated the law of nations; the decision was a discretionary foreign policy decision.

U.S.—El-Shifa Pharmaceutical Industries Co. v. U.S., 607 F.3d 836 (D.C. Cir. 2010).

Sovereignty of Taiwan

The political question doctrine barred the district court from considering an action brought by residents of Taiwan asserting that they were nationals of the United States and that the United States was allegedly exercising sovereignty over Taiwan; the suit raised policy questions that were textually committed to coordinate branches of government concerning the sovereignty of Taiwan following Japan's renunciation of sovereignty at the end of World War II, and the action would require the court to decide a political task.

U.S.—Lin v. U.S., 561 F.3d 502 (D.C. Cir. 2009).

4 U.S.—Akio Kuwahara v. Acheson, 96 F. Supp. 38 (S.D. Cal. 1951); Kletter v. Dulles, 111 F. Supp. 593 (D. D.C. 1953), judgment aff'd, 268 F.2d 582 (D.C. Cir. 1959); Shyu Jeng Shyong v. Esperdy, 294 F. Supp. 355 (S.D. N.Y. 1969).

5 U.S.—U.S. v. Pink, 315 U.S. 203, 62 S. Ct. 552, 86 L. Ed. 796 (1942).

N.Y.—Ren-Guey v. Lake Placid 1980 Olympic Games, Inc., 72 A.D.2d 439, 424 N.Y.S.2d 535 (3d Dep't 1980), order aff'd, 49 N.Y.2d 771, 426 N.Y.S.2d 473, 403 N.E.2d 178 (1980).

6 U.S.—State of Russia v. National City Bank of New York, 69 F.2d 44 (C.C.A. 2d Cir. 1934); Sevilla v. Elizalde, 112 F.2d 29 (App. D.C. 1940).

7 U.S.—Dickson v. Ford, 521 F.2d 234 (5th Cir. 1975).

United Nations expenditures

U.S.—United States-South West Africa/Namibia Trade and Cultural Council v. U.S. Dept. of State, 90 F.R.D. 695 (D.D.C. 1981).

8 U.S.—New York Life Ins. Co. v. Durham, 166 F.2d 874 (C.C.A. 10th Cir. 1948); Stinson v. New York Life Ins. Co., 167 F.2d 233 (App. D.C. 1948).

Pa.—Beley v. Pennsylvania Mut. Life Ins. Co., 373 Pa. 231, 95 A.2d 202, 36 A.L.R.2d 996 (1953).

9 U.S.—Holtzman v. Schlesinger, 484 F.2d 1307 (2d Cir. 1973); DaCosta v. Laird, 471 F.2d 1146 (2d Cir. 1973); El-Shifa Pharmaceutical Industries Co. v. U.S., 607 F.3d 836 (D.C. Cir. 2010); U.S. v. Watson, 373 F. Supp. 1119 (E.D. Wis. 1974).

10 Pa.—Commonwealth ex rel. Schaffer v. Bell Telephone Co., 47 Pa. C.C. 323, 28 Pa. Dist. 400, 1919 WL 2927 (Pa. C.P. 1919).

11 U.S.—Application of Yamashita, 327 U.S. 1, 66 S. Ct. 340, 90 L. Ed. 499 (1946).

12 N.Y.—Wulfsohn v. Russian Socialist Federated Soviet Republic, 234 N.Y. 372, 138 N.E. 24 (1923).

13 U.S.—Freiberg v. Muskie, 651 F.2d 608 (8th Cir. 1981).

14 U.S.—Occidental of Umm al Qaywayn, Inc. v. A Certain Cargo of Petroleum Laden Aboard Tanker Dauntless Colocotronis, 577 F.2d 1196 (5th Cir. 1978); Occidental Petroleum Corp. v. Buttes Gas & Oil Co., 331 F. Supp. 92, 14 Fed. R. Serv. 2d 1399 (C.D. Cal. 1971), judgment aff'd, 461 F.2d 1261 (9th Cir. 1972).

15 U.S.—U.S. ex rel. Cardashian v. Snyder, 44 F.2d 895 (App. D.C. 1930).

N.Y.—Curran v. City of New York, 191 Misc. 229, 77 N.Y.S.2d 206 (Sup 1947), judgment aff'd, 275 A.D. 784, 88 N.Y.S.2d 924 (2d Dep't 1949).

As to actions against foreign sovereigns or entities, generally, see C.J.S., International Law §§ 38 to 55.

16 U.S.—Dickson v. Ford, 521 F.2d 234 (5th Cir. 1975); Holmes v. Laird, 459 F.2d 1211, 17 A.L.R. Fed. 705 (D.C. Cir. 1972); Drinan v. Nixon, 364 F. Supp. 854 (D. Mass. 1973).

Identification of place of birth

An action by parents of a child born in Jerusalem, seeking a declaratory judgment and permanent injunction ordering the Secretary of State to identify the child's place of birth as "Jerusalem, Israel" in official documents pursuant to the Foreign Relations Authorization Act, was not barred under the "political question" doctrine; the parents did not ask the courts to determine whether Jerusalem was the capital of Israel, but instead sought to determine whether the child might vindicate his statutory right to choose to have Israel recorded on his passport, the courts in order to solve the claim would have to engage in the familiar judicial exercise of deciding if the parents' interpretation of the statute was correct and whether the statute was constitutional, and the parties' arguments sounded in familiar principles of constitutional interpretation.

U.S.—Zivotofsky ex rel. Zivotofsky v. Clinton, 132 S. Ct. 1421, 182 L. Ed. 2d 423, 75 A.L.R. Fed. 2d 637 (2012).

17 U.S.—U.S. v. First Nat. City Bank, 396 F.2d 897 (2d Cir. 1968); Dickson v. Ford, 521 F.2d 234 (5th Cir. 1975); Drinan v. Nixon, 364 F. Supp. 854 (D. Mass. 1973).

18 U.S.—Atlee v. Laird, 347 F. Supp. 689 (E.D. Pa. 1972), judgment aff'd, 411 U.S. 911, 93 S. Ct. 1545, 36 L. Ed. 2d 304 (1973).

19 U.S.—Atlee v. Laird, 347 F. Supp. 689 (E.D. Pa. 1972), judgment aff'd, 411 U.S. 911, 93 S. Ct. 1545, 36 L. Ed. 2d 304 (1973).

20 U.S.—Atlee v. Laird, 347 F. Supp. 689 (E.D. Pa. 1972), judgment aff'd, 411 U.S. 911, 93 S. Ct. 1545, 36 L. Ed. 2d 304 (1973).

21 U.S.—Atlee v. Laird, 347 F. Supp. 689 (E.D. Pa. 1972), judgment aff'd, 411 U.S. 911, 93 S. Ct. 1545, 36 L. Ed. 2d 304 (1973).

22 U.S.—Atlee v. Laird, 347 F. Supp. 689 (E.D. Pa. 1972), judgment aff'd, 411 U.S. 911, 93 S. Ct. 1545, 36 L. Ed. 2d 304 (1973).

23 U.S.—Z. & F. Assets Realization Corporation v. Hull, 114 F.2d 464 (App. D.C. 1940), judgment aff'd, 311 U.S. 470, 61 S. Ct. 351, 85 L. Ed. 288 (1941).

Construction of treaties

U.S.—Trans World Airlines, Inc. v. Franklin Mint Corp., 466 U.S. 243, 104 S. Ct. 1776, 80 L. Ed. 2d 273 (1984); U.S. v. Decker, 600 F.2d 733 (9th Cir. 1979).

24 U.S.—Banco de Espana v. Federal Reserve Bank of New York, 114 F.2d 438 (C.C.A. 2d Cir. 1940).

25 U.S.—Sneaker Circus, Inc. v. Carter, 566 F.2d 396 (2d Cir. 1977).

End of Document

16 C.J.S. Constitutional Law § 399

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

2. Political Questions

a. In General

§ 399. Immigration and naturalization

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2580

There is only a limited scope of judicial inquiry into immigration and naturalization legislation or decisions.

There is only a limited scope of judicial inquiry into immigration and naturalization legislation or decisions.[1] For example, the power to expel or exclude aliens is a fundamental sovereign attribute exercised by the government's political department largely immune from judicial control.[2] However, although it is beyond the province of the court to interfere with the exercise of the political sovereign power of the United States to deal with aliens, governmental policy towards aliens is not wholly immune from judicial power, and the courts will interfere if the political branches of government deny the protection of the Fifth Amendment of the United States Constitution to an alien who is entitled to invoke it.[3] A claim is not foreclosed by the political-question doctrine where the issue involves due process constraints on the executive's authority in an area where power is expressly delegated to Congress.[4] Likewise, the question of whether the Civil Service Commission may deny to a resident alien the opportunity to take a competitive examination for federal civil service employment, and whether appropriation acts

may prohibit the use of appropriate funds to pay aliens employed in the civil service of United States, do not involve such political questions as to preclude judicial determination.[5]

CUMULATIVE SUPPLEMENT

Cases:

The admission and exclusion of foreign nationals is a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control. Trump v. Hawaii, 138 S. Ct. 2392 (2018).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Fiallo v. Bell, 430 U.S. 787, 97 S. Ct. 1473, 52 L. Ed. 2d 50 (1977).
Cal.—People v. Hyung Joon Kim, 45 Cal. 4th 1078, 90 Cal. Rptr. 3d 355, 202 P.3d 436 (2009).
Reasons for narrow standard of review
(1) The reasons that preclude judicial review of political questions also dictate a narrow standard of review of decisions made by Congress or the President in the area of immigration and naturalization.
U.S.—Mathews v. Diaz, 426 U.S. 67, 96 S. Ct. 1883, 48 L. Ed. 2d 478 (1976).
(2) Concerns over the judicial role are heightened when the issue before the court involves enforcement of the immigration laws, in that this subject raises the stakes of, among other factors, immediate human concerns and policy choices that bear on this nation's international relations, and the Constitution places such sensitive immigration and economic judgments squarely in the hands of the Political Branches, not the courts.
U.S.—Arpaio v. Obama, 27 F. Supp. 3d 185 (D.D.C. 2014).

2 U.S.—Fiallo v. Bell, 430 U.S. 787, 97 S. Ct. 1473, 52 L. Ed. 2d 50 (1977); Hyuk Joon Lim v. Holder, 710 F.3d 1074 (9th Cir. 2013).
Extent of immunity from judicial inquiry
Since the policy toward aliens is interwoven with contemporaneous policies with respect to foreign relations, the war power, and maintenance of a republican form of government, such matters are so exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry.
U.S.—Coleman v. McGrath, 343 U.S. 936, 72 S. Ct. 768, 96 L. Ed. 1344 (1952); Harisiades v. Shaughnessy, 342 U.S. 580, 72 S. Ct. 512, 96 L. Ed. 586 (1952).

3 U.S.—Han-Lee Mao v. Brownell, 207 F.2d 142 (D.C. Cir. 1953).
Claims not barred by political-question doctrine
(1) The political-question doctrine did not deprive the district court of jurisdiction to hear the claims of an alien who was paroled into the United States to testify at a heroin conspiracy trial, and who sought injunctive relief to prevent the government from returning him to China; although the responsibility for regulating the relationship between United States and alien visitors was committed to the political branches of government, the alien challenged the way government treated him rather than the way it treated aliens in general.
U.S.—Xiao v. Reno, 837 F. Supp. 1506 (N.D. Cal. 1993), aff'd, 81 F.3d 808 (9th Cir. 1996).
(2) The political-question doctrine did not bar the district court from considering the validity of an Immigration and Naturalization Service policy placing excludable aliens in detention until they established a prima facie claim for admission.
U.S.—Louis v. Nelson, 544 F. Supp. 973 (S.D. Fla. 1982), aff'd in part, rev'd in part on other grounds, 711 F.2d 1455 (11th Cir. 1983), on reh'g, 727 F.2d 957 (11th Cir. 1984), judgment aff'd, 472 U.S. 846, 105 S. Ct. 2992, 86 L. Ed. 2d 664 (1985).
Discrimination against aliens

Although the federal government need not show that the federal interests which accord the federal government the power to discriminate against aliens outweigh the deprivation imposed by a statute concerning aliens, the government must demonstrate that those interests are substantially advanced by the challenged enactment, rather than merely rationally related to it, and only then can the court satisfy itself that particular federal interests justifying deference to the political branches are genuinely at stake.

U.S.—Mow Sun Wong v. Hampton, 435 F. Supp. 37 (N.D. Cal. 1977), decision aff'd, 626 F.2d 739 (9th Cir. 1980).

As to preclusion of judicial review of political questions, generally, see § 392.

4 U.S.—Olegario v. U.S., 629 F.2d 204 (2d Cir. 1980).

5 U.S.—Jalil v. Hampton, 460 F.2d 923 (D.C. Cir. 1972).

End of Document

16 C.J.S. Constitutional Law § 400

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

2. Political Questions

a. In General

§ 400. Existence, lawfulness, and territory of, governments

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2580, 2583

Questions relating to the existence or legality of the government under which a court is acting, as well as questions arising under the federal constitutional provision guaranteeing a republican form of government to every state, are political in character and are not matters for judicial determination.

Questions relating to the existence or legality of the government under which the court is acting are political questions and not within the scope of the judicial function.[1] Similarly, determination of the question as to who is the sovereign de jure or de facto of a particular territory or foreign state is political and not for the judiciary.[2] Other questions that are political and not for the judiciary are those relating to the political status of a state of the Union[3] and the extent of the territorial limits of the nation or state in which the court exercises authority.[4]

Questions arising under the federal constitutional provision guaranteeing a republican form of government to every state generally are political in character and are not matters for judicial determination.[5] That is, claims brought under the federal

constitution's guaranty clause, which guarantees a republican form of government, do not present justiciable controversies that can be adjudicated by the courts; rather, the guaranty clause provides a political guarantee that must be addressed through the political process.[6] Thus, whether the government of a state has ceased to be republican in form by reason of the adoption of the initiative and referendum,[7] or of other constitutional or statutory provisions,[8] is not for the determination of the judiciary.

On the other hand, cases arising under such a provision are not necessarily nonjusticiable.[9] Rather, the courts must look to the facts and circumstances surrounding the litigation, as well as the theory upon which the constitutional challenge is premised, to ascertain whether the issue may be resolved by the judicial process.[10] Thus, for example, a question arising under the provision is justiciable where there is no textually demonstrable commitment of the guaranty clause's enforcement to any other branch of the state government, the traditional elements of a political controversy are not present, and the question does not call for an adjudication as to whether the state government as an entity is a nullity.[11]

Footnotes

1 Minn.—In re McConaughy, 106 Minn. 392, 119 N.W. 408 (1909).
N.J.—Carpenter v. Cornish, 83 N.J.L. 696, 85 A. 240 (N.J. Ct. Err. & App. 1912).

2 U.S.—U.S. v. State of Cal., 332 U.S. 19, 67 S. Ct. 1658, 91 L. Ed. 1889 (1947), opinion supplemented, 332 U.S. 804, 68 S. Ct. 20, 92 L. Ed. 382 (1947); Panama Agencies Co. v. Franco, 111 F.2d 263 (C.C.A. 5th Cir. 1940).
N.Y.—Eckert v. Elmhurst Contracting Co., 185 Misc. 108, 56 N.Y.S.2d 98 (N.Y. City Ct. 1945), judgment aff'd, 186 Misc. 100, 61 N.Y.S.2d 730 (App. Term 1945).

3 U.S.—Highland Farms Dairy v. Agnew, 300 U.S. 608, 57 S. Ct. 549, 81 L. Ed. 835 (1937).

4 Cal.—People v. Stralla, 14 Cal. 2d 617, 96 P.2d 941 (1939).

5 U.S.—O'Hair v. Hill, 641 F.2d 307 (5th Cir. 1981); Hobson v. Tobriner, 255 F. Supp. 295 (D. D.C. 1966); Kaelin v. Warden, 334 F. Supp. 602 (E.D. Pa. 1971); State of S.D. v. Adams, 506 F. Supp. 50 (D.S.D. 1980), judgment aff'd, 635 F.2d 698 (8th Cir. 1980).
Application of provision to municipal government
U.S.—Hanson v. Town of Flower Mound, 679 F.2d 497, 34 Fed. R. Serv. 2d 626 (5th Cir. 1982).

6 Minn.—Clayton v. Kiffmeyer, 688 N.W.2d 117 (Minn. 2004) (referring to U.S. Const. Art. IV, § 4).
Three strikes law
A claim that a "three strikes law" violates the Federal Constitution's guarantee of a republican form of government presents a political, not judicial, question which is beyond the power of the state supreme court to determine.
Wash.—State v. Manussier, 129 Wash. 2d 652, 921 P.2d 473 (1996).

7 Ariz.—Iman v. Southern Pac. Co., 7 Ariz. App. 16, 435 P.2d 851 (1968).

8 Colo.—People ex rel. Tate v. Prevost, 55 Colo. 199, 134 P. 129 (1913).
Statute providing for free school books
La.—Borden v. Louisiana State Board of Education, 168 La. 1005, 123 So. 655, 67 A.L.R. 1183 (1928).

9 U.S.—Kerr v. Hickenlooper, 744 F.3d 1156 (10th Cir. 2014).
Kan.—VanSickle v. Shanahan, 212 Kan. 426, 511 P.2d 223 (1973).

10 Kan.—VanSickle v. Shanahan, 212 Kan. 426, 511 P.2d 223 (1973).

11 Kan.—VanSickle v. Shanahan, 212 Kan. 426, 511 P.2d 223 (1973).

16 C.J.S. Constitutional Law § 401

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

2. Political Questions

a. In General

§ 401. Territorial divisions and boundaries; annexation

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2580

The division of a state or a county into political districts, and the determination of boundaries, are generally not matters concerning the judiciary.

The division of a state into congressional districts;[1] the determination of the need for, and the geographical boundaries of, changed judicial districts;[2] the creation, enlargement, or diminution of political districts[3] or the determination of the boundaries thereof;[4] and the subdivision of counties into political districts[5] are generally not matters concerning the judiciary. In addition, matters pertaining to the creation or boundaries of municipalities,[6] or the detachment of land therefrom,[7] ordinarily do not present questions for judicial determination. The same rule pertains with respect to the formation and dissolution of school districts[8] and the selection and location of county seats.[9]

As a general rule, all facets of annexation are political questions for exclusive legislative resolution.[10] However, whether the mandate of an annexation statute has been followed,[11] and whether a particular annexation statute violates the Equal Protection Clause of the United States Constitution,[12] are justiciable questions.

Footnotes

1 Minn.—State ex rel. Smiley v. Holm, 184 Minn. 228, 238 N.W. 494 (1931).

2 Ky.—Cornett v. Clements, 309 Ky. 80, 216 S.W.2d 417 (1948).

3 Kan.—Kowing v. Douglas County Kaw Drainage Dist., 167 Kan. 387, 207 P.2d 457 (1949).
Mo.—Town of Alexandria v. Clark County, 231 S.W.2d 622 (Mo. 1950).

4 Tex.—State ex rel. Grimes County Taxpayers Ass'n v. Texas Municipal Power Agency, 565 S.W.2d 258 (Tex. Civ. App. Houston 1st Dist. 1978), dismissed, (July 19, 1978).
Hospital district
Tex.—Carter v. Hamlin Hospital Dist., 538 S.W.2d 671 (Tex. Civ. App. Eastland 1976), writ refused n.r.e., (Dec. 1, 1976).
Determination of municipal boundaries
The determination of the boundaries of a municipality is ordinarily a political function, entirely within the power of the legislature of a state to regulate, and the remedy of those aggrieved is not in seeking relief in the courts but in the legislature.
Tex.—Superior Oil Co. v. City of Port Arthur, 628 S.W.2d 94 (Tex. App. Beaumont 1981), writ refused n.r.e.

5 S.D.—State v. Richards, 61 S.D. 28, 245 N.W. 901 (1932).

6 Del.—Mayor and Council of City of Dover v. Kelley, 327 A.2d 748 (Del. 1974).
Mich.—Village of Wolverine Lake v. Michigan State Boundary Commission, 79 Mich. App. 56, 261 N.W.2d 206 (1977).
Tex.—Superior Oil Co. v. City of Port Arthur, 628 S.W.2d 94 (Tex. App. Beaumont 1981), writ refused n.r.e.

7 Kan.—Kowing v. Douglas County Kaw Drainage Dist., 167 Kan. 387, 207 P.2d 457 (1949).
Ky.—Yount v. City of Frankfort, 255 S.W.2d 632 (Ky. 1953).
Mo.—State ex rel. and to Use of Behrens v. Crismon, 354 Mo. 174, 188 S.W.2d 937 (1945).

8 Tex.—Consolidated Common School Dist. No. 5 v. Wood, 112 S.W.2d 231 (Tex. Civ. App. Eastland 1937), dismissed.

9 N.M.—Orchard v. Board of Com'rs of Sierra County, 1938-NMSC-011, 42 N.M. 172, 76 P.2d 41 (1938).

10 Alaska—U.S. Smelting, Refining & Min. Co. v. Local Boundary Com'n, 489 P.2d 140 (Alaska 1971).
Mont.—Burritt v. City of Butte, 161 Mont. 530, 508 P.2d 563 (1973).
Tex.—Superior Oil Co. v. City of Port Arthur, 628 S.W.2d 94 (Tex. App. Beaumont 1981), writ refused n.r.e.

11 Alaska—U.S. Smelting, Refining & Min. Co. v. Local Boundary Com'n, 489 P.2d 140 (Alaska 1971).

12 U.S.—Adams v. City of Colorado Springs, 308 F. Supp. 1397 (D. Colo. 1970), judgment aff'd, 399 U.S. 901, 90 S. Ct. 2197, 26 L. Ed. 2d 555 (1970).

16 C.J.S. Constitutional Law § 402

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

2. Political Questions

a. In General

§ 402. Indians

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2589

The political-question doctrine generally is applicable to matters involving Indians, their tribal relations, and the determination of the status of Indian tribes.

The political-question doctrine generally is applicable to matters involving Indians, their tribal relations, and the determination of the status of Indian tribes.[1] Among the questions that are not within the power of the judiciary to determine is the question as to whether, and to what extent, Indian communities within the United States must be dealt with as dependent tribes requiring the protection of the United States.[2] Other political questions that are nonjusticiable include those relating to the protection and administration of the property of Indian tribes;[3] federal acknowledgment as an Indian tribe;[4] statutes regarding the acquisition of trust land for Indian tribes;[5] the manner, method, and time of the sovereign's extinguishment of an Indian tribe's aboriginal title to land;[6] and treaties with Indian tribes.[7]

The political-question doctrine is not, however, applicable to all claims involving Indians.[8] For example, a nonjusticiable political decision is not presented where the plaintiff seeks only to enforce a congressional enactment rather than seeking a judicial inquiry into the wisdom of a congressional decision.[9]

Footnotes

1 U.S.—National Indian Youth Council, Intermountain Indian School Chapter v. Bruce, 485 F.2d 97 (10th Cir. 1973).

As to the political-question doctrine, generally, see § 392.

Proper location for off-reservation school for Indian youth

U.S.—National Indian Youth Council v. Bruce, 366 F. Supp. 313 (D. Utah 1973), judgment aff'd, 485 F.2d 97 (10th Cir. 1973).

Right to land area

Recognition of an Indian tribe's right to an area of land is a political question, not a judicial one, and rests entirely in the hands of Congress.

U.S.—Donahue v. Butz, 363 F. Supp. 1316 (N.D. Cal. 1973).

2 U.S.—U.S. v. Wright, 53 F.2d 300 (C.C.A. 4th Cir. 1931); U.S. v. Dewey County, S.D., 14 F.2d 784 (D.S.D. 1926), aff'd, 26 F.2d 434 (C.C.A. 8th Cir. 1928).

Cessation

It is for the Legislative Branch of government to say when Indians cease to be dependent and assume responsibilities attaching to citizenship, and that is a political question which courts may not determine.

S.D.—Pourier v. Board of County Com'rs of Shannon County, 83 S.D. 235, 157 N.W.2d 532 (1968).

3 U.S.—Finch v. U.S., 387 F.2d 13 (10th Cir. 1967); Chemah v. Fodder, 259 F. Supp. 910 (W.D. Okla. 1966); U.S. v. Dewey County, S.D., 14 F.2d 784 (D.S.D. 1926), aff'd, 26 F.2d 434 (C.C.A. 8th Cir. 1928).

4 U.S.—Winnemem Wintu Tribe v. U.S. Dept. of Interior, 725 F. Supp. 2d 1119 (E.D. Cal. 2010).

5 U.S.—South Dakota v. U.S. Dept. of Interior, 787 F. Supp. 2d 981 (D.S.D. 2011).

6 U.S.—Delaware Nation v. Pennsylvania, 446 F.3d 410 (3d Cir. 2006), as amended, (June 14, 2006).

7 U.S.—Crow Nation v. U.S., 81 Ct. Cl. 238, 1935 WL 2303 (1935).

Making, modifying, or abrogating treaty

U.S.—Kansas or Kaw Tribe of Indians v. U.S., 80 Ct. Cl. 264, 1934 WL 2055 (1934); Osage Tribe of Indians v. U.S., 66 Ct. Cl. 64, 1928 WL 2993 (1928).

Enforcement of treaties

U.S.—Johnson v. Gearlds, 234 U.S. 422, 34 S. Ct. 794, 58 L. Ed. 1383 (1914).

Treaty party or successor in interest

Recognition of a tribe as a treaty party or the political successor in interest to a treaty party is a political question.

U.S.—U.S. v. State of Wash., 384 F. Supp. 312 (W.D. Wash. 1974), aff'd and remanded on other grounds, 520 F.2d 676 (9th Cir. 1975).

8 U.S.—Dodge v. Nakai, 298 F. Supp. 17 (D. Ariz. 1968).

Claim not barred

Congress's delegation of civil remedial authority to the President concerning Indian affairs did not mean that an issue raised in Indian tribes' federal common law action for violation of their possessory rights was a nonjusticiable political question, and thus, the Indian tribe's claim was not barred by the political-question doctrine.

U.S.—Oneida County, N.Y. v. Oneida Indian Nation of New York State, 470 U.S. 226, 105 S. Ct. 1245, 84 L. Ed. 2d 169 (1985).

Initial policy determination by Congress not essential

Indian land-claim litigation challenging the validity of treaties involving land entered into prior to the adoption of the United States Constitution, when the Articles of Confederation were in effect, did not present a nonjusticiable political question since the resolution of the question of whether the State had a preconstitutional duty enforceable by those plaintiffs did not require a policy determination but, rather,

involved construction of the Articles of Confederation and the legal decision as to whether particular plaintiffs were proper beneficiaries.

U.S.—Oneida Indian Nation of New York v. State of N. Y., 520 F. Supp. 1278, 65 A.L.R. Fed. 606 (N.D. N.Y. 1981), judgment aff'd in part, rev'd in part on other grounds, 691 F.2d 1070, 11 Fed. R. Evid. Serv. 1002 (2d Cir. 1982).

9 U.S.—Narragansett Tribe of Indians v. Southern Rhode Island Land Development Corp., 418 F. Supp. 798 (D.R.I. 1976).

Determination of legislative intent

U.S.—Joint Tribal Council of Passamaquoddy Tribe v. Morton, 388 F. Supp. 649 (D. Me. 1975), judgment aff'd, 528 F.2d 370 (1st Cir. 1975).

Issue of whether plaintiff is a tribe within meaning of statute

U.S.—Joint Tribal Council of Passamaquoddy Tribe v. Morton, 388 F. Supp. 649 (D. Me. 1975), judgment aff'd, 528 F.2d 370 (1st Cir. 1975); Narragansett Tribe of Indians v. Southern Rhode Island Land Development Corp., 418 F. Supp. 798 (D.R.I. 1976).

End of Document

16 C.J.S. Constitutional Law § 403

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

2. Political Questions

a. In General

§ 403. Other particular questions

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2580

Among particular questions that are political and, accordingly, outside the range of judicial consideration are questions as to what constitutes necessary expenses of government, whether claims on the treasury of the United States are founded on just obligations, whether the government should engage in private enterprise, and whether or not property held as public property is necessary for the public use.

Among particular questions that are political and, accordingly, outside the range of judicial consideration are questions as to what constitutes necessary expenses of government,[1] whether claims on the Treasury of the United States are founded on just obligations,[2] whether the government should engage in private enterprise,[3] and whether or not property held as public property is necessary for the public use.[4] Other cases that are of a political character, and which therefore fall outside the scope of the judicial function, are those wherein the matter under consideration is the character of the occupation of a tract of land reserved by the political departments of the government for military purposes;[5] what laws are necessary for the immediate preservation of the public peace, health, or safety, so as to be exempt from the referendum;[6] whether civil service examinations should be

held;[7] whether the public needs protection from unreasonable uses of highways;[8] and whether waters once navigable continue to be such.[9]

On the other hand, matters that are not political, and which therefore are justiciable, include those relating to the powers of the governor in the issue of patents,[10] where the seat of government is,[11] whether a statute creating a new county violates a provision of the constitution stating that neither the new county nor any county from which territory is taken may be less than a certain area,[12] and whether a statute covers employees in a particular locality.[13] Moreover, the direct determination of questions of property is not a political issue.[14] Also, a challenge by state legislators to an initiative measure adopted by voters and amending the state constitution, alleging that the measure violated the state's enabling act is not a political question but rather is a question seeking judicial review of the legislators' interpretation of the enabling act.[15]

Liability of federal and state governments.

The function of recognizing liability in the United States for claims that have no legal or equitable basis under existing law is a political, and not a judicial, question.[16] Neither is it within the power of the judiciary to determine whether a state may be sued in the absence of its consent thereto.[17]

CUMULATIVE SUPPLEMENT

Cases:

The respective merits of class actions and private arbitration as means of enforcing the law are questions constitutionally entrusted not to the courts to decide but to the policymakers in the political branches where those questions remain hotly contested. Fed.Rules Civ.Proc.Rule 23, 28 U.S.C.A. Epic Systems Corp. v. Lewis, 138 S. Ct. 1612 (2018).

[END OF SUPPLEMENT]

Footnotes

1 Ark.—State v. Moore, 76 Ark. 197, 88 S.W. 881 (1905).

2 U.S.—U.S. v. Realty Co., 163 U.S. 427, 16 S. Ct. 1120, 41 L. Ed. 215 (1896).

3 U.S.—U.S. v. City of Hoboken, N.J., 29 F.2d 932 (D.N.J. 1928).

4 La.—City of Monroe v. Johnston, 106 La. 350, 30 So. 840 (1901).

5 U.S.—Benson v. U.S., 146 U.S. 325, 13 S. Ct. 60, 36 L. Ed. 991 (1892).

6 Ark.—Hanson v. Hodges, 109 Ark. 479, 160 S.W. 392 (1913).
Colo.—In re Senate Resolution No. 4, 54 Colo. 262, 130 P. 333 (1913).
Or.—Kadderly v. City of Portland, 44 Or. 118, 74 P. 710 (1903).

7 Ohio—State v. Schroer, 11 Ohio Op. 407, 26 Ohio L. Abs. 577, 1 Ohio Supp. 164, 1938 WL 1520 (C.P. 1938).

8 Wash.—State ex rel. York v. Board of Com'rs of Walla Walla County, 28 Wash. 2d 891, 184 P.2d 577, 172 A.L.R. 1001 (1947).

9 U.S.—Economy Light & Power Co. v. U.S., 256 U.S. 113, 41 S. Ct. 409, 65 L. Ed. 847 (1921).
Wis.—In re Crawford County Levee & Drainage Dist. No. 1, 182 Wis. 404, 196 N.W. 874 (1924).

10 Colo.—Greenwood Cemetery Land Co. v. Routt, 17 Colo. 156, 28 P. 1125 (1892).

11 Okla.—State v. Huston, 1910 OK 259, 27 Okla. 606, 113 P. 190 (1910).

Wash.—State ex rel. Lemon v. Langlie, 45 Wash. 2d 82, 273 P.2d 464 (1954).

12 Ky.—Zimmerman v. Brooks, 118 Ky. 85, 25 Ky. L. Rptr. 2284, 80 S.W. 443 (1904).

13 U.S.—Vermilya-Brown Co. v. Connell, 335 U.S. 377, 69 S. Ct. 140, 93 L. Ed. 76 (1948).

14 U.S.—Banco de Espana v. Federal Reserve Bank of New York, 114 F.2d 438 (C.C.A. 2d Cir. 1940).

15 U.S.—Kerr v. Hickenlooper, 744 F.3d 1156 (10th Cir. 2014).

16 U.S.—Otoe and Missouria Tribe of Indians v. U. S., 131 Ct. Cl. 593, 131 F. Supp. 265 (1955).

17 Mont.—Coldwater v. State Highway Commission, 118 Mont. 65, 162 P.2d 772 (1945).

End of Document

16 C.J.S. Constitutional Law § 404

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

2. Political Questions

b. Legislative Matters

§ 404. Legislative actions, generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2580

Questions relating to the action of a legislature, while discharging its legal and constitutional functions as a law-making body, generally are outside the purview of the judicial function.

Questions relating to the action of a legislature, while discharging its legal and constitutional functions as a law-making body, generally are outside the purview of the judicial function.[1] A challenge to the legislature's exercise of a power which a constitutional provision commits exclusively to the legislature presents a nonjusticiable political question.[2] Furthermore, the manner, method, and instrumentalities through which the people of the state determine to legislate are political questions[3] as well as what administrative agencies are to be provided.[4]

On the other hand, the judiciary may pass on attempted legislative action which is unconstitutional and illegal.[5] For example, a request for declaratory and injunctive relief brought by the governor of a state to quash a legislative subpoena, on separation-of-powers grounds, which subpoena would require the governor to testify before a legislative committee in connection with the

committee's investigation of whether grounds existed for impeaching the governor does not present a nonjusticiable political question.[6]

For purposes of determining whether a defendant legislator has committed the offense of misconduct in office by exercising discretionary power in a manner inconsistent with the duties of the office, the issue of whether the defendant's hiring and directing of staff members to perform opposition research, using state resources, violates a legislative rule providing that no campaigning activity is permitted during working hours or using state resources is a nonjusticiable political question, thus precluding prosecution, where it is unclear whether such activity violates the defendant's duty under the rule.[7] By comparison, a legislator's alleged conduct in hiring and directing staff to work on party campaigns using state resources is an unambiguous violation of an internal legislative rule providing that no campaigning activity is permitted during working hours or using state resources, and thus, the legislator's prosecution for felony misconduct in office, based on such alleged violations of his or her duty as a legislator, is not precluded by the political-question doctrine.[8]

Matters involving United States Congress.

The principle of separation of powers precludes the courts from reviewing congressional practices and procedures when they primarily and directly affect the way Congress does its legislative business even if such disposition would render a constitutional question unreviewable.[9]

Whether the United States Congress seeks unjustifiably to control matters which ought to remain with the states is a political issue except in a case of clear usurpation.[10] Likewise, a claim that the Impeachment Trial Clause of the United States Constitution is violated by a Senate rule which allows a committee to hear evidence against an individual who has been impeached and to report to the full Senate is not justiciable.[11]

Footnotes

1 Cal.—Marks v. Whitney, 6 Cal. 3d 251, 98 Cal. Rptr. 790, 491 P.2d 374 (1971).
Pa.—Sweeney v. Tucker, 473 Pa. 493, 375 A.2d 698 (1977).
Inquiry into discussion of political nature between executive and Legislative Branches
U.S.—Citizens for Management of Alaska Lands v. Department of Agr., 447 F. Supp. 753 (D. Alaska 1978).
Internal affairs and proceedings of legislature
The question of whether a vote by "a majority of each house" necessary for passage of a bill constitutionally required the bill to pass each legislative house by a majority of a quorum, rather than by a majority of votes cast in the presence of a quorum, was a nonjusticiable political question, properly left to the Legislative Branch.
Ala.—Birmingham-Jefferson Civic Center Authority v. City of Birmingham, 912 So. 2d 204 (Ala. 2005).

2 Pa.—Grimaud v. Com., 581 Pa. 398, 865 A.2d 835 (2005).
As to the justiciability of reapportionment of legislative bodies, see § 406.
Establishing ages for attending school
Establishing the proper age parameters for starting and completing school is a nonjusticiable political question reserved for the legislature.
N.C.—Hoke County Bd. of Educ. v. State, 358 N.C. 605, 599 S.E.2d 365, 190 Ed. Law Rep. 661 (2004).
Election redistricting
Legislative action is entitled to great deference in election redistricting matters, and the courts should only intervene when the legislature has failed to perform its function in a constitutional manner.
Mich.—LeRoux v. Secretary of State, 465 Mich. 594, 640 N.W.2d 849 (2002).

3 Idaho—Luker v. Curtis, 64 Idaho 703, 136 P.2d 978 (1943).

As to the general prohibition against encroachment by the judiciary on the exercise of the veto power by a governor of a state, see § 434.

Circumvention or manipulation of veto power

The legislature's designation of a "section" in a statute is conclusive, unless it is obviously designed to circumvent the governor's veto power and is a palpable attempt at dissimulation but, where the state supreme court discerns legislative drafting that so alters the natural sequences and divisions of a bill as to circumvent the governor's veto power, it reserves the right to strike down such maneuvers, and if the governor manipulates the veto power, the court will also intervene to forestall such conduct.

Wash.—Washington State Legislature v. Lowry, 131 Wash. 2d 309, 931 P.2d 885 (1997).

4 Ala.—Johnson v. Robinson, 238 Ala. 568, 192 So. 412 (1939).

5 Pa.—Sweeney v. Tucker, 473 Pa. 493, 375 A.2d 698 (1977).

Wis.—Outagamie County v. Smith, 38 Wis. 2d 24, 155 N.W.2d 639 (1968).

6 Conn.—Office of Governor v. Select Committee of Inquiry, 271 Conn. 540, 858 A.2d 709 (2004).

As to the separation-of-powers doctrine, generally, see § 272.

As to the effect of the separation-of-powers doctrine in determining the nature and scope of the powers of governmental departments, see § 384.

7 Wis.—State v. Chvala, 2004 WI App 53, 271 Wis. 2d 115, 678 N.W.2d 880 (Ct. App. 2004), decision aff'd, 2005 WI 30, 279 Wis. 2d 216, 693 N.W.2d 747 (2005).

8 Wis.—State v. Chvala, 2004 WI App 53, 271 Wis. 2d 115, 678 N.W.2d 880 (Ct. App. 2004), decision aff'd, 2005 WI 30, 279 Wis. 2d 216, 693 N.W.2d 747 (2005).

9 U.S.—Skaggs v. Carle, 898 F. Supp. 1 (D.D.C. 1995), judgment aff'd, 110 F.3d 831 (D.C. Cir. 1997).

10 U.S.—Mulford v. Smith, 24 F. Supp. 919 (M.D. Ga. 1938), decree aff'd by, 307 U.S. 38, 59 S. Ct. 648, 83 L. Ed. 1092 (1939).

11 U.S.—Nixon v. U.S., 506 U.S. 224, 113 S. Ct. 732, 122 L. Ed. 2d 1 (1993).

End of Document

16 C.J.S. Constitutional Law § 405

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

2. Political Questions

b. Legislative Matters

§ 405. Adoption of constitution and amendments

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2581

It is a political question as to whether or not a new constitution has been adopted, but whether an amendment to a constitution has become a part thereof is ordinarily considered to be a question for the courts to determine.

It is a political question, not one for judicial determination, as to whether or not a new constitution has been adopted.[1] However, whether an amendment to an existing constitution has been proposed, adopted, and ratified in the manner required by the constitution, so as to become a part thereof, ordinarily is a question for the courts to determine[2] except where the matter has been committed by the constitution to a special tribunal with power to make a conclusive determination.[3] For example, a dispute as to whether a state substantially complied with constitutional procedures for submitting a constitutional amendment to the voters is justiciable where its resolution can be accomplished by the application of previously developed, judicially manageable standards without risking undue constitutional strain or inter-branch conflict.[4] Judicial review of the validity of a constitutional amendment authorizing the issuance of bonds by a state likewise is appropriate and consistent with the proper role of the courts in helping to ensure that the political processes are operating properly and that they permit an expression of the will of the people.[5]

Although there is authority to the contrary,[6] it may be within the judicial power to determine whether the republican form of government, as guaranteed by the Federal Constitution, is violated by an amendment of a state constitution.[7] On the other hand, the action of the people, at an election, in directing that a revised constitution be written and submitted for their approval, is a political question.[8] Similarly, questions relating to a proposal to amend a constitution may be considered political and not for the judiciary.[9]

Footnotes

1 Okla.—Frantz v. Autry, 1907 OK 65, 18 Okla. 561, 91 P. 193 (1907).

2 U.S.—Dyer v. Blair, 390 F. Supp. 1291 (N.D. Ill. 1975).
Ark.—Chaney v. Bryant, 259 Ark. 294, 532 S.W.2d 741 (1976).
Va.—Harrison v. Day, 201 Va. 386, 111 S.E.2d 504 (1959).

3 Va.—Harrison v. Day, 201 Va. 386, 111 S.E.2d 504 (1959).

4 W. Va.—State ex rel. Cooper v. Caperton, 196 W. Va. 208, 470 S.E.2d 162 (1996).

5 W. Va.—State ex rel. Cooper v. Caperton, 196 W. Va. 208, 470 S.E.2d 162 (1996).
As to the nonjusticiability of political questions concerning economic policies and public funds, see § 396.

6 Or.—Baum v. Newbry, 200 Or. 576, 267 P.2d 220 (1954).

7 Kan.—VanSickle v. Shanahan, 212 Kan. 426, 511 P.2d 223 (1973).
As to the justiciability of issues arising under the republican-form-of-government provision, generally, see § 400.

8 N.J.—In re Application of Borg, 131 N.J.L. 104, 35 A.2d 220 (N.J. Sup. Ct. 1944).

9 Ky.—Funk v. Fielder, 243 S.W.2d 474 (Ky. 1951).

16 C.J.S. Constitutional Law § 406

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

2. Political Questions

b. Legislative Matters

§ 406. Reapportionment of legislative bodies

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2580

Legislative reapportionment is primarily a matter for legislative determination, but judicial relief becomes appropriate when the legislature fails to reapportion according to constitutional requisites in a timely fashion after having adequate opportunity to do so.

As a general rule, legislative reapportionment is primarily a matter for legislative determination.[1] Once the requirement of one person, one vote is met, the courts should be reluctant to interfere in the process[2] for to do so is to exceed the scope of their judicial function.[3] Until such time as the legislature indicates complete unwillingness or inability to face up to the job, state and congressional apportionment is for the legislature, not the courts.[4]

However, legislative reapportionment cases may be entertained by the courts,[5] and constitutional challenges to apportionment are justiciable.[6] Thus, the issue of whether Congress's apportionment of congressional districts among the states is constitutional does not involve a nonjusticiable political question.[7] Similarly, judicial relief becomes appropriate when the legislature fails to

reapportion according to constitutional requisites in a timely fashion, after having an adequate opportunity to do so[8] or where there is no effective political remedy to obtain relief.[9]

Once a court finds the existence of legislative malapportionment, it has authority to fashion appropriate relief, in light of well-known principles of equity.[10]

Footnotes

1 U.S.—Sixty-Seventh Minnesota State Senate v. Beens, 406 U.S. 187, 92 S. Ct. 1477, 32 L. Ed. 2d 1 (1972); Connor v. Williams, 404 U.S. 549, 92 S. Ct. 656, 30 L. Ed. 2d 704 (1972); Burton v. Hobbie, 543 F. Supp. 235 (M.D. Ala. 1982), judgment aff'd, 459 U.S. 961, 103 S. Ct. 286, 74 L. Ed. 2d 272 (1982).
Tenn.—State ex rel. Lockert v. Crowell, 631 S.W.2d 702 (Tenn. 1982).
Political question and judgments
(1) Whether a republican form of government requires redistricting to be performed by the legislature is a political question.
U.S.—Grivetti v. Illinois State Electoral Bd., 335 F. Supp. 779 (N.D. Ill. 1971), judgment aff'd, 406 U.S. 913, 92 S. Ct. 1772, 32 L. Ed. 2d 113 (1972) and judgment aff'd, 406 U.S. 913, 92 S. Ct. 1777, 32 L. Ed. 2d 113 (1972).
(2) Publicly elected state legislators are in a better position than appointed-for-life federal judges to make political judgments.
U.S.—Paige v. Gray, 437 F. Supp. 137 (M.D. Ga. 1977).
Wisdom, desirability, need
Questions of the wisdom, desirability, need, or appropriateness of a reapportionment plan are for the Legislative Branch of government.
Wis.—La Crosse County v. City of La Crosse, 108 Wis. 2d 560, 322 N.W.2d 531 (Ct. App. 1982).

2 Cal.—Griswold v. County of San Diego, 32 Cal. App. 3d 56, 107 Cal. Rptr. 845 (4th Dist. 1973).

3 N.Y.—Honig v. Rensselaer County Legislature, 41 A.D.2d 796, 341 N.Y.S.2d 479 (3d Dep't 1973), order aff'd, 32 N.Y.2d 688, 343 N.Y.S.2d 363, 296 N.E.2d 259 (1973).

4 U.S.—Bush v. Martin, 251 F. Supp. 484 (S.D. Tex. 1966).
Haw.—Chikasuye v. Lota, 50 Haw. 511, 50 Haw. 589, 444 P.2d 904 (1968).

5 U.S.—Wesberry v. Sanders, 376 U.S. 1, 84 S. Ct. 526, 11 L. Ed. 2d 481 (1964); Baker v. Carr, 369 U.S. 186, 82 S. Ct. 691, 7 L. Ed. 2d 663 (1962).
Mo.—Armentrout v. Schooler, 409 S.W.2d 138 (Mo. 1966).
Adjustment of census
An action seeking to require census officials to adjust the census figures to compensate for an expected undercount of the city and state population did not involve a nonjusticiable political question notwithstanding that one purpose was for apportioning representatives in Congress.
U.S.—Carey v. Klutznick, 508 F. Supp. 404 (S.D. N.Y. 1980).

6 U.S.—Franklin v. Massachusetts, 505 U.S. 788, 112 S. Ct. 2767, 120 L. Ed. 2d 636 (1992).
As to the separation-of-powers doctrine, generally, see § 272.
As to the effect of the separation-of-powers doctrine in determining the nature and scope of the powers of governmental departments, see § 384.
Duty of courts to insure equal protection
Although reapportionment should be resolved by the Legislative Branch, it is the court's duty to insure the electorate equal protection of the laws, and thus, a court can draft a reapportionment plan for use in upcoming elections where an impasse has been created by the legislature's failure to pass reapportionment bills acceptable to the governor of the state.
Cal.—Wilson v. Eu, 54 Cal. 3d 471, 286 Cal. Rptr. 280, 816 P.2d 1306 (1991).
Ultimate review in courts
The fact that, under a constitutional amendment governing reapportionment, the state supreme court exercised ultimate review of an apportionment plan to determine whether it comported with the federal and

state constitutions furnished no basis for objection on separation of powers grounds since such a review is, and always has been, a judicial function.

Colo.—In re Interrogatories Propounded by Senate Concerning House Bill 1078, 189 Colo. 1, 536 P.2d 308 (1975).

7 U.S.—U.S. Dept. of Commerce v. Montana, 503 U.S. 442, 112 S. Ct. 1415, 118 L. Ed. 2d 87 (1992).

8 U.S.—Sixty-Seventh Minnesota State Senate v. Beens, 406 U.S. 187, 92 S. Ct. 1477, 32 L. Ed. 2d 1 (1972); Connor v. Williams, 404 U.S. 549, 92 S. Ct. 656, 30 L. Ed. 2d 704 (1972).

Wis.—La Crosse County v. City of La Crosse, 108 Wis. 2d 560, 322 N.W.2d 531 (Ct. App. 1982).

Failure to apportion state into federal congressional districts

When a state legislature does not act to apportion the state into federal congressional legislative districts, citizens may sue and, then, it is the judiciary's role to determine the appropriate redistricting plan.

Tex.—Perry v. Del Rio, 67 S.W.3d 85 (Tex. 2001).

9 U.S.—Davis v. Mann, 377 U.S. 678, 84 S. Ct. 1441, 12 L. Ed. 2d 609 (1964); WMCA, Inc. v. Lomenzo, 377 U.S. 633, 84 S. Ct. 1418, 12 L. Ed. 2d 568 (1964); Reynolds v. Sims, 377 U.S. 533, 84 S. Ct. 1362, 12 L. Ed. 2d 506 (1964).

10 U.S.—Baker v. Carr, 369 U.S. 186, 82 S. Ct. 691, 7 L. Ed. 2d 663 (1962).

Special election

If effectuation of a political remedy for legislative malapportionment involves voter approval at an election, and submission to the voters at an election provided by law will unduly delay effectuation of a remedy, the court may order a special election.

Haw.—Chikasuye v. Lota, 51 Haw. 443, 51 Haw. 477, 462 P.2d 192 (1969).

End of Document

16 C.J.S. Constitutional Law § 407

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

2. Political Questions

b. Legislative Matters

§ 407. Reapportionment of legislative bodies—Redistricting

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2580

The subdivision of counties and cities into political districts is primarily within the control of the legislative department, and the judiciary may not strike down a valid legislative redistricting plan because, in the judiciary's opinion, a better plan could be drawn.

The subdivision of counties and cities into political districts is primarily within the control of the legislative department,[1] and the judiciary is not justified in striking down a legislative redistricting plan, otherwise valid, because a better one, in its opinion, could be drawn.[2] However, the courts have power to determine whether constitutional provisions have been violated.[3]

While congressional redistricting is typically a legislative function, the courts must resolve redistricting controversies when the legislature does not do so.[4] The separation-of-powers doctrine does not require that a state supreme court decline jurisdiction over a case challenging a state senate redistricting plan; the justiciability of redistricting claims is not limited to those cases where the legislature has wholly failed to act, and the court has power to review the constitutionality of a plan.[5]

CUMULATIVE SUPPLEMENT

Cases:

Partisan gerrymandering claims present political questions beyond the reach of the federal courts, that is, such claims are not justiciable; the Constitution contains no legal standards for resolving such claims that are grounded in a limited and precise rationale, and that are judicially discernible and manageable. U.S. Const. art. 3, § 2, cl. 1. Rucho v. Common Cause, 139 S. Ct. 2484 (2019).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Nixon v. Brewer, 49 F.R.D. 122 (M.D. Ala. 1970).
N.Y.—Honig v. Rensselaer County Legislature, 41 A.D.2d 796, 341 N.Y.S.2d 479 (3d Dep't 1973), order aff'd, 32 N.Y.2d 688, 343 N.Y.S.2d 363, 296 N.E.2d 259 (1973).
Factors considered
Consideration of such factors as topography, geography, contiguity and the existence of communities of interest, and the weight to be given them in establishing political districts are matters directed primarily to the Legislative Branch for determination, and when such determinations have been made by the legislative body, the courts should not interfere.
Cal.—Griswold v. County of San Diego, 32 Cal. App. 3d 56, 107 Cal. Rptr. 845 (4th Dist. 1973).

2 N.J.—McNeil v. Legislative Apportionment Com'n of State, 177 N.J. 364, 828 A.2d 840 (2003).

3 Mass.—Attorney General v. Suffolk County Apportionment Com'rs, 224 Mass. 598, 113 N.E. 581 (1916).
Manifest abuse of discretion
Cal.—Griswold v. County of San Diego, 32 Cal. App. 3d 56, 107 Cal. Rptr. 845 (4th Dist. 1973).
Weighted voting
With respect to weighted voting, considered judgment is impossible without a computer analyses and, accordingly, if county boards of supervisors have chosen to reapportion themselves by use of weighted voting there is no alternative but to require them to come forward with such analyses and demonstrate the validity of their reapportionment plans.
N.Y.—Iannucci v. Board of Sup'rs of Washington County, 20 N.Y.2d 244, 282 N.Y.S.2d 502, 229 N.E.2d 195 (1967).

4 Tex.—Perry v. Del Rio, 67 S.W.3d 85 (Tex. 2001).

5 Ala.—Rice v. English, 835 So. 2d 157 (Ala. 2002).

End of Document

16 C.J.S. Constitutional Law § 408

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

2. Political Questions

c. Taxation and Assessments

§ 408. Province of judiciary regarding matters of taxation, generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2593

The legislative rather than the Judicial Branch of the government has full and uncontrolled discretion in matters relating to the imposition of taxes.

The power of levying taxes is legislative rather than judicial.[1] Accordingly, subject to constitutional limitations restricting the power of the legislature in matters of taxation, that power is supreme and not subject to control by the judiciary.[2] Thus, it is for the legislature and not the judiciary to consider the motives for imposing a tax;[3] the necessity or expediency of a particular tax law;[4] whether a tax law is equitable and just or arbitrary, oppressive, and confiscatory;[5] the wisdom of a particular tax as a policy of government or economics;[6] and the practical difficulties in the application of the provisions of the act.[7]

Furthermore, subject to constitutional restrictions on such power, the legislative rather than the Judicial Branch of the government has full and uncontrolled discretion in determining the scheme or system of taxation.[8] Thus, more specifically, the legislative rather than the Judicial Branch possesses discretion in selecting the subjects of taxation,[9] in the method of taxation,[10]

in prescribing classifications,[11] in fixing the amount and rate of taxation,[12] and in the apportionment of taxes.[13] The legislative, rather than the Judicial Branch, also has discretion in permitting deductions,[14] creating taxing districts and prescribing their boundaries,[15] creating tax liens,[16] providing methods of collection,[17] providing remedies,[18] and providing for refunds.[19]

On the other hand, the validity of taxes imposed by the legislature is always a subject of judicial inquiry.[20] Thus, whether a tax statute violates the provision of the Fourteenth Amendment to the Federal Constitution guaranteeing equal protection of the laws is for judicial determination.[21] The judiciary may also consider whether the legislature has laid down an intelligible and reasonably definite standard as a guide which an administrative officer, in applying the taxing power of the legislature, may follow in carrying out its mandates.[22]

Footnotes

1 Or.—Stanley v. City of Salem, 247 Or. 60, 427 P.2d 406 (1967).
Tex.—Superior Oil Co. v. City of Port Arthur, 628 S.W.2d 94 (Tex. App. Beaumont 1981), writ refused n.r.e.
Wash.—Oil Heat Institute of Wash. v. Town of Mukilteo, 81 Wash. 2d 7, 498 P.2d 864 (1972).

2 U.S.—U.S. v. Boyd, 378 U.S. 39, 84 S. Ct. 1518, 12 L. Ed. 2d 713 (1964).
Ohio—In re Bingham's Estate, 60 Ohio L. Abs. 202, 100 N.E.2d 870 (Ct. App. 8th Dist. Cuyahoga County 1951).

3 U.S.—Fernandez v. Wiener, 326 U.S. 340, 66 S. Ct. 178, 90 L. Ed. 116 (1945); Henneford v. Silas Mason Co., 300 U.S. 577, 57 S. Ct. 524, 81 L. Ed. 814 (1937); A. Magnano Co. v. Hamilton, 292 U.S. 40, 54 S. Ct. 599, 78 L. Ed. 1109 (1934).

4 Colo.—City and County of Denver v. Lewin, 106 Colo. 331, 105 P.2d 854 (1940).
Ky.—Com. v. St. Matthews Gas & Elec. Shop, 252 S.W.2d 673 (Ky. 1952).

5 U.S.—Arnold v. U.S., 289 F. Supp. 206 (E.D. N.Y. 1968).
Or.—Eugene Theatre Co. v. City of Eugene, 194 Or. 603, 243 P.2d 1060 (1952).
Wash.—Gilbreath v. Pacific Coast Coal & Oil Co., 75 Wash. 2d 255, 450 P.2d 173 (1969).

6 U.S.—Northwestern States Portland Cement Co. v. State of Minn., 358 U.S. 450, 79 S. Ct. 357, 3 L. Ed. 2d 421, 67 A.L.R.2d 1292 (1959); Northwestern States Portland Cement Co. v. State of Minn., 358 U.S. 450, 79 S. Ct. 357, 3 L. Ed. 2d 421, 67 A.L.R.2d 1292 (1959).
Ky.—Com. v. St. Matthews Gas & Elec. Shop, 252 S.W.2d 673 (Ky. 1952).
Wis.—Household Finance Corp. v. Wisconsin Dept. of Taxation, 260 Wis. 536, 51 N.W.2d 558 (1952).
As to the nonjusticiability of matters relating to the general welfare and economic policies, see § 396.

7 U.S.—Commissioner of Internal Revenue v. Columbia River Paper Mills, 127 F.2d 558 (C.C.A. 9th Cir. 1942).

8 Ill.—People ex rel. Brenza v. Gebbie, 5 Ill. 2d 565, 126 N.E.2d 657 (1955).

9 Ohio—Toledo Business & Professional Women's Retirement Living, Inc. v. Board of Tax Appeals, 27 Ohio St. 2d 255, 56 Ohio Op. 2d 153, 272 N.E.2d 359 (1971).
Or.—Equitable Sav. & Loan Ass'n v. State Tax Commission, 251 Or. 70, 444 P.2d 916 (1968).

10 Nev.—Dunn v. Nevada Tax Commission, 67 Nev. 173, 216 P.2d 985 (1950).

11 Ohio—City of Dayton v. Cloud, 30 Ohio St. 2d 295, 59 Ohio Op. 2d 370, 285 N.E.2d 42 (1972).
Okla.—Oklahoma Tax Commission v. Smith, 1980 OK 74, 610 P.2d 794 (Okla. 1980).
Tex.—Bullock v. ABC Interstate Theatres, Inc., 557 S.W.2d 337 (Tex. Civ. App. Austin 1977), writ refused n.r.e., (Apr. 12, 1978).

12 U.S.—Liberty Paper Bd. Co. v. U.S., 37 F. Supp. 751 (S.D. Ohio 1941); Creque v. Shulterbrandt, 3 V.I. 39, 121 F. Supp. 448 (D.V.I. 1954).
Wash.—Oil Heat Institute of Wash. v. Town of Mukilteo, 81 Wash. 2d 7, 498 P.2d 864 (1972).

13 N.Y.—In re Mollenhauer's Will, 257 A.D. 286, 13 N.Y.S.2d 619 (2d Dep't 1939).

14 U.S.—Henslee v. Union Planters Nat. Bank & Trust Co., 335 U.S. 595, 69 S. Ct. 290, 93 L. Ed. 259 (1949).
Okla.—Oklahoma Tax Commission v. Smith, 1980 OK 74, 610 P.2d 794 (Okla. 1980).

15 N.Y.—Gaynor v. Marohn, 268 N.Y. 417, 198 N.E. 13 (1935).

16 U.S.—Standard Acceptance Co. v. U.S., 342 F. Supp. 45, 11 U.C.C. Rep. Serv. 37 (N.D. Ill. 1972).

17 U.S.—Flora v. U.S., 357 U.S. 63, 78 S. Ct. 1079, 2 L. Ed. 2d 1165 (1958), on reh'g, 362 U.S. 145, 80 S. Ct. 630, 4 L. Ed. 2d 623 (1960).
Mich.—People of City of Detroit v. Pillon, 18 Mich. App. 373, 171 N.W.2d 484 (1969).

18 Mass.—Boston Five Cents Sav. Bank v. Assessors of Boston, 317 Mass. 694, 59 N.E.2d 454 (1945).

19 Colo.—Armstrong v. Driscoll Const. Co., 107 Colo. 218, 110 P.2d 651 (1941).

20 U.S.—Jones v. Box Elder County, 52 F.2d 340 (C.C.A. 10th Cir. 1931).

21 N.J.—McKenney v. Byrne, 82 N.J. 304, 412 A.2d 1041 (1980).

22 U.S.—Butler v. U. S., 78 F.2d 1 (C.C.A. 1st Cir. 1935), aff'd, 297 U.S. 1, 56 S. Ct. 312, 80 L. Ed. 477, 102 A.L.R. 914 (1936).

End of Document

16 C.J.S. Constitutional Law § 409

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

2. Political Questions

c. Taxation and Assessments

§ 409. Exemptions as within province of judiciary

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2593

Questions relating to the creation of tax exemptions are generally for the legislature rather than the judiciary.

Questions relating to the creation of tax exemptions are generally for the legislature rather than the judiciary.[1] A constitutional exemption cannot be enlarged on by the courts.[2] However, regardless of what the legislature declares to be exempt by statute, the courts are empowered to determine whether an organization or property is exempt within a section of the constitution limiting exemptions to charitable organizations or purposes.[3] Moreover, the grant of a tax exemption to certain organizations which discriminate in their membership on the basis of race involves constitutional, not merely political, questions, clearly justiciable by the courts.[4]

Footnotes

1 Ga.—Hawes v. William L. Bonnell Co., 116 Ga. App. 184, 156 S.E.2d 536 (1967).
Minn.—State v. North Star Research and Development Institute, 294 Minn. 56, 200 N.W.2d 410 (1972).
Ohio—City of Dayton v. Cloud, 30 Ohio St. 2d 295, 59 Ohio Op. 2d 370, 285 N.E.2d 42 (1972).

2 Tex.—City of Wichita Falls v. Cooper, 170 S.W.2d 777 (Tex. Civ. App. Fort Worth 1943), writ refused, (June 16, 1943).

Difficulties with compliance

The difficulty which might or might not be experienced by insurers in sufficiently complying with an exemption statute to get the full benefit thereof is not a matter for judicial interference or relief.
S.C.—State v. Life Ins. Co. of Georgia, 254 S.C. 286, 175 S.E.2d 203 (1970).

3 Ill.—Small v. Pangle, 60 Ill. 2d 510, 328 N.E.2d 285 (1975).

School purposes

Ill.—MacMurray College v. Wright, 38 Ill. 2d 272, 230 N.E.2d 846 (1967).

4 U.S.—Pitts v. Department of Revenue for State of Wis., 333 F. Supp. 662 (E.D. Wis. 1971).

End of Document

16 C.J.S. Constitutional Law § 410

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

2. Political Questions

c. Taxation and Assessments

§ 410. Determination of public purpose

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2593

The determination of what is a public purpose within constitutional limitations on the taxing power is, in the first instance, for the legislature.

The determination of what is a public purpose, within constitutional limitations on the taxing power, is in the first instance for the legislature.[1] Thus, it is primarily for Congress to determine whether a particular tax imposed by that body serves to pay the debts and provide for the common defense and general welfare of the United States, within limitations on the taxing power as prescribed by the Federal Constitution.[2]

The question as to whether a purpose for which taxation is levied is a public purpose within the meaning of the constitution is, however, ultimately a question for the judiciary[3] as is the question as to what constitutes "necessary expenses."[4] However, where in imposing taxes the line of distinction between that which is allowable as a public purpose, and that which is not, is faint and shadowy, the judiciary cannot interfere with the decision of the legislature.[5] In doubtful cases, the will of the legislature

should prevail over any mere doubts of the judiciary.[6] The authority of a court to interfere with a statute on the ground that the tax is not for a public purpose must be exercised with extreme caution,[7] and a court can only be justified in interposing where a violation is clear[8] and the reason for the interference cogent.[9] A court will not interfere with the legislative determination unless the finding is clearly wrong.[10]

Footnotes

1 Ill.—People v. City of Chicago, 413 Ill. 83, 108 N.E.2d 16 (1952).
S.C.—Bolt v. Cobb, 225 S.C. 408, 82 S.E.2d 789 (1954).

2 U.S.—Cincinnati Soap Co. v. U.S., 301 U.S. 308, 57 S. Ct. 764, 81 L. Ed. 1122 (1937); Kansas Gas & Electric Co. v. City of Independence, Kan., 79 F.2d 32, 100 A.L.R. 1479 (C.C.A. 10th Cir. 1935).

3 Pa.—Appeal of Municipal Authority of Borough of West View, 381 Pa. 416, 113 A.2d 307 (1955).

4 N.C.—Purser v. Ledbetter, 227 N.C. 1, 40 S.E.2d 702 (1946).

5 Okla.—Wallace v. Childers, 1947 OK 171, 198 Okla. 604, 180 P.2d 1005 (1947).

6 Ill.—People v. City of Chicago, 413 Ill. 83, 108 N.E.2d 16 (1952).
Neb.—Evans v. Metropolitan Utilities Dist. of Omaha, 187 Neb. 261, 188 N.W.2d 851 (1971).

7 U.S.—Everson v. Board of Ed. of Ewing Tp., 330 U.S. 1, 67 S. Ct. 504, 91 L. Ed. 711, 168 A.L.R. 1392 (1947).

8 Wis.—State ex rel. American Legion 1941 Convention Corp. of Milwaukee v. Smith, 235 Wis. 443, 293 N.W. 161 (1940).

9 Wis.—State ex rel. American Legion 1941 Convention Corp. of Milwaukee v. Smith, 235 Wis. 443, 293 N.W. 161 (1940).

10 S.C.—Cothran v. Mallory, 211 S.C. 387, 45 S.E.2d 599 (1947).

16 C.J.S. Constitutional Law § 411

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

2. Political Questions

c. Taxation and Assessments

§ 411. Power to make assessments

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2593

In accordance with the rule that the power to impose taxes is a legislative and not a judicial function, the power to make assessments for general property taxes is in the legislative and not the Judicial Branch of government.

In accordance with the rule that the power to impose taxes is a legislative and not a judicial function, the power to make assessments for general property taxes is in the legislative and not the Judicial Branch of government.[1] Similarly, the power to make assessments on property for local improvements is for the legislature rather than the judiciary.[2]

Likewise, the discretion of the legislature is not subject to judicial control in defining the limits of assessment districts for public improvements,[3] in determining the amount of money to be raised,[4] in determining the proportion of benefits within prescribed districts,[5] or in formulating the rules for the assessment of property for benefits conferred.[6] Legislative confirmation of an assessment does not, however, preclude judicial inquiry into an alleged violation of constitutional limitations[7] or in determining whether the policy to be followed in the assessment of taxes has been accurately applied.[8]

Footnotes

1 Fla.—Lanier v. Bronson, 215 So. 2d 776 (Fla. 4th DCA 1968).
Ill.—People ex rel. Joseph v. Schoenborn, 41 Ill. 2d 302, 242 N.E.2d 147 (1968).
As to the power of the legislature to impose taxes, generally, see § 408.
Assessment formula
A court cannot rule in advance of an assessment and orderly review thereof, by appeal from the assessment to the state tax commission and then to the courts, that a supervisor of assessment must follow some particular formula for determining the full cash value of a property.
Md.—Rogan v. Calvert County Com'rs, 194 Md. 299, 71 A.2d 47 (1950).
Mode of assessment
Prescribing of the mode of making assessments is a legislative, rather than judicial, function.
Neb.—Speer v. Kratzenstein, 143 Neb. 300, 9 N.W.2d 306 (1943), opinion modified on other grounds on reh'g, 143 Neb. 311, 12 N.W.2d 360 (1943).

2 Fla.—Town of Gulfport, for Use and Benefit of C. J. Williamson & Co. v. Mendels, 127 Fla. 730, 174 So. 8 (1937).
Reassessments
Questions relating to reassessments for special improvements are generally for legislature rather than for the judiciary.
Cal.—Cowart v. Union Paving Co., 216 Cal. 375, 14 P.2d 764, 83 A.L.R. 1185 (1932).

3 Ind.—Board of Com'rs of Wells County v. Falk, 221 Ind. 376, 47 N.E.2d 320, 145 A.L.R. 1190 (1943).
Ohio—Laskey v. Hilty, 91 Ohio App. 136, 48 Ohio Op. 272, 107 N.E.2d 899 (6th Dist. Lucas County 1951).

4 Tex.—City of Dallas v. Firestone Tire & Rubber Co., 66 S.W.2d 729 (Tex. Civ. App. Dallas 1933), writ refused.

5 Fla.—Davis v. City of Clearwater, 104 Fla. 42, 139 So. 825 (1932).

6 Or.—State ex rel. Galloway v. Watson, 167 Or. 403, 118 P.2d 107 (1941).

7 U.S.—Road Imp. Dist. No. 1 of Franklin County, Ark. v. Missouri Pac. R. Co., 274 U.S. 188, 47 S. Ct. 563, 71 L. Ed. 992 (1927).
Ark.—McGriff v. State, 212 Ark. 98, 204 S.W.2d 885 (1947).

8 Alaska—Winegardner v. Greater Anchorage Area Borough Bd. of Equalization, 534 P.2d 541 (Alaska 1975).

16 C.J.S. Constitutional Law § 412

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

3. Encroachment on, or Interference with, Legislature

a. In General

§ 412. Judiciary's encroachment on, or interference with, legislature, generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2470

The courts generally cannot encroach on, or interfere with, the proper exercise of the constitutional powers of the legislature.

As a general rule, the courts cannot encroach on, or interfere with, the proper exercise of the constitutional powers of the legislature.[1] Accordingly, the courts have nothing to do with a purely legislative question or function[2] and may not usurp legislative functions.[3]

The Judicial Branch of the government has no general supervision over legislation,[4] and the courts cannot review[5] or control[6] the discretion of the legislature as to matters within its province, including matters relating to impeachment.[7]

The judicial department cannot prescribe to the legislative department of the government limitations on the exercise of its acknowledged power.[8] Prior to the enactment of a statute, the courts cannot determine its constitutionality or validity[9] or enjoin its enactment.[10] Furthermore, the courts cannot compel[11] or enjoin[12] the exercise of legislative powers.

CUMULATIVE SUPPLEMENT

Cases:

Because decisions in matters concerning the admission or exclusion of foreign nationals may implicate relations with foreign powers or involve classifications defined in the light of changing political and economic circumstances, such judgments are frequently of a character more appropriate to either the Legislature or the Executive, rather than the Judiciary. Trump v. Hawaii, 138 S. Ct. 2392 (2018).

Because decisions regarding the admission and exclusion of noncitizens may implicate relations with foreign powers, or involve classifications defined in the light of changing political and economic circumstances, such judgments are frequently of a character more appropriate to either the Legislature or the Executive, rather than the Judiciary. Baan Rao Thai Restaurant v. Pompeo, 985 F.3d 1020 (D.C. Cir. 2021).

Although a court will intervene to protect constitutional rights from infringement by Congress, including its committees and members, unless and until Congress adopts a rule that offends the Constitution, a court will not interfere with how each chamber of Congress chooses to run its internal affairs. Trump v. Mazars USA, LLP, 940 F.3d 710 (D.C. Cir. 2019).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—State of Alabama v. State of Texas, 347 U.S. 272, 74 S. Ct. 481, 98 L. Ed. 689 (1954); Harrington v. Bush, 553 F.2d 190 (D.C. Cir. 1977).
Ala.—Gallant v. Gallant, 2014 WL 7202968 (Ala. Civ. App. 2014).
Ark.—Arkansas State Highway Commission v. White Advertising Intern., 273 Ark. 364, 620 S.W.2d 280 (1981).
Haw.—Life of the Land v. Land Use Commission of State of Hawaii, 63 Haw. 166, 623 P.2d 431 (1981).
Minn.—State v. C. A., 304 N.W.2d 353 (Minn. 1981).
Enlargement of crimes beyond statute
The spirit of the separation of powers doctrine which denies to the federal judiciary power to create crimes forthrightly admonishes that the federal courts should not enlarge the reach of enacted crimes by constituting them from anything less than the incriminating components contemplated by the words used in the statute.
U.S.—Boulware v. U.S., 552 U.S. 421, 128 S. Ct. 1168, 170 L. Ed. 2d 34 (2008).

2 Pa.—Pheasant Run Civic Organization v. Board of Com'rs of Penn Tp., 60 Pa. Commw. 216, 430 A.2d 1231 (1981).
As to legislative matters involving nonjusticiable political questions, generally, see § 404.
Litigation not to be used to achieve legislative goals
Ill.—City of Chicago v. Beretta U.S.A. Corp., 213 Ill. 2d 351, 290 Ill. Dec. 525, 821 N.E.2d 1099 (2004).

3 U.S.—C.I.R. v. Brown, 380 U.S. 563, 85 S. Ct. 1162, 14 L. Ed. 2d 75 (1965).
Ill.—Chirikos v. Yellow Cab Co., 87 Ill. App. 3d 569, 43 Ill. Dec. 61, 410 N.E.2d 61 (1st Dist. 1980).
Mich.—People v. Gilbert, 414 Mich. 191, 324 N.W.2d 834 (1982).
N.Y.—Matter of Quinton A., 49 N.Y.2d 328, 425 N.Y.S.2d 788, 402 N.E.2d 126 (1980).

As to the effect of the separation-of-powers doctrine in determining the powers of governmental departments, see § 384.

4 U.S.—Leighton v. Goodman, 311 F. Supp. 1181 (S.D. N.Y. 1970).
Ill.—Hulse v. Kirk, 28 Ill. App. 3d 839, 329 N.E.2d 286 (1st Dist. 1975).
Kan.—State ex rel. Schneider v. Liggett, 223 Kan. 610, 576 P.2d 221 (1978).
As to inquiry by the courts into the motive, wisdom, or expediency of legislation, see § 426.

Court does not sit as a super legislature

U.S.—Weekes-Walker v. Macon County Greyhound Park, Inc., 877 F. Supp. 2d 1192 (M.D. Ala. 2012).
Cal.—People v. Flores, 227 Cal. App. 4th 1070, 174 Cal. Rptr. 3d 390 (2d Dist. 2014), review denied, (Sept. 24, 2014).
N.J.—Lugano v. Director, Division of Taxation, 28 N.J. Tax 49, 2014 WL 2464891 (2014).

5 U.S.—Shaughnessy v. United States ex rel. Mezei, 345 U.S. 206, 73 S. Ct. 625, 97 L. Ed. 956 (1953).
Ark.—Hill v. Bank of Northeast Arkansas, 264 Ark. 412, 572 S.W.2d 150 (1978).
Ohio—Beerman v. City of Kettering, 14 Ohio Misc. 144, 43 Ohio Op. 2d 351, 237 N.E.2d 641 (C.P. 1965).

6 Fla.—City of Miami Beach v. Kaiser, 213 So. 2d 449 (Fla. 3d DCA 1968).
Okla.—City of Bethany v. District Court of Oklahoma County, 1948 OK 38, 200 Okla. 49, 191 P.2d 187 (1948).
S.D.—Schmitt v. Nord, 71 S.D. 575, 27 N.W.2d 910 (1947).

7 Fla.—Forbes v. Earle, 298 So. 2d 1 (Fla. 1974); State ex rel. Kelly v. Sullivan, 52 So. 2d 422 (Fla. 1951).
N.H.—In re Mussman, 112 N.H. 99, 289 A.2d 403, 53 A.L.R.3d 877 (1972).

8 U.S.—U.S. v. Darby, 312 U.S. 100, 312 U.S. 657, 61 S. Ct. 451, 85 L. Ed. 609, 132 A.L.R. 1430 (1941).

Infringement upon inherent powers prohibited

La.—Hoag v. State, 889 So. 2d 1019 (La. 2004).

9 U.S.—Younger v. Harris, 401 U.S. 37, 91 S. Ct. 756, 27 L. Ed. 2d 669 (1971).
Ky.—Avey Drilling Mach. Co. v. Lukowsky, 261 S.W.2d 432 (Ky. 1953).
Neb.—Noble v. City of Lincoln, 153 Neb. 79, 43 N.W.2d 578 (1950).
As to advisory opinions, generally, see § 390.

10 Ill.—Murphy v. Collins, 20 Ill. App. 3d 181, 312 N.E.2d 772 (1st Dist. 1974).

11 Ark.—Wells v. Purcell, 267 Ark. 456, 592 S.W.2d 100 (1979).
N.J.—City of Camden v. Byrne, 82 N.J. 133, 411 A.2d 462 (1980).
Ohio—State ex rel. Slemmer v. Brown, 34 Ohio App. 2d 27, 63 Ohio Op. 2d 55, 295 N.E.2d 434 (10th Dist. Franklin County 1973).
Wash.—Pannell v. Thompson, 91 Wash. 2d 591, 589 P.2d 1235 (1979).

12 Mich.—Randall v. Township Bd. of Meridian Tp., Ingham County, 342 Mich. 605, 70 N.W.2d 728 (1955).

End of Document

16 C.J.S. Constitutional Law § 413

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

3. Encroachment on, or Interference with, Legislature

a. In General

§ 413. Making, interpreting, and applying statutes

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2472 to 2476

The function of the courts is not to make, but to interpret and apply, the laws.

In view of the rule that the courts may not encroach on, or interfere with, the legislature, the courts have no power to legislate.[1] The function of the courts is not to make, but to interpret and apply, the laws.[2]

Where statutes are within the power of the legislature and are properly enacted, the courts are bound thereby[3] and must enforce them as written.[4] The question for the court is not what the legislature should have provided but what is the law declared by the legislature.[5] The court cannot substitute its judgment for that of the legislative body as to matters within the discretion of the legislature or Congress[6] and cannot rewrite a statute in accordance with its own notions or to conform to what it believes to be the legislative intent.[7]

Nevertheless, to some extent, the courts do and must legislate,[8] but they do so only interstitially.[9] Thus, the function of the court when dealing with legislation does not go beyond that of filling in the small gaps left by the legislature in accordance with what appears to be the legislative purpose.[10]

CUMULATIVE SUPPLEMENT

Cases:

Supreme Court is not free to extend a federal statute to a sphere Congress was well aware of but chose to leave alone. (Per Justice Gorsuch, with two Justices concurring and three Justices concurring in the judgment.) Virginia Uranium, Inc. v. Warren, 139 S. Ct. 1894 (2019).

Congress alone has the institutional competence, democratic legitimacy, and, most importantly, constitutional authority to revise statutes in light of new social problems and preferences; until it exercises that power, the people may rely on the original meaning of the written law. Wisconsin Central Ltd. v. U.S., 138 S. Ct. 2067 (2018).

When an issue involves a host of considerations that must be weighed and appraised, it should be committed to those who write the laws, rather than those who interpret them. Ziglar v. Abbasi, 2017 WL 2621317 (U.S. 2017).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Stanard v. Olesen, 74 S. Ct. 768, 98 L. Ed. 1151 (1954).
Ill.—Inland Real Estate Corp. v. Village of Palatine, 107 Ill. App. 3d 279, 63 Ill. Dec. 234, 437 N.E.2d 883 (1st Dist. 1982).
Mo.—Brooks v. Pool-Leffler, 636 S.W.2d 113 (Mo. Ct. App. E.D. 1982).
Mont.—Covenant Investments, Inc. v. State, Dept. of Revenue, 2013 MT 215, 371 Mont. 186, 308 P.3d 54 (2013).
S.D.—AEG Processing Center No. 58, Inc. v. South Dakota Dept. of Revenue and Regulation, 2013 SD 75, 838 N.W.2d 843 (S.D. 2013).
Wyo.—Seherr-Thoss v. Teton County Bd. of County Com'rs, 2014 WY 82, 329 P.3d 936 (Wyo. 2014).
As to the nonjusticiability of political questions involving legislative matters, generally, see § 404.
Public policy determinations
(1) Public policy determinations are better suited to the legislative rather than the judicial forum.
La.—In re Katrina Canal Breaches Litigation, 63 So. 3d 955 (La. 2011).
(2) It is not within a court's province to second-guess the policymaking decisions of the legislature when no constitutional principle is at issue.
N.J.—Aronberg v. Tolbert, 207 N.J. 587, 25 A.3d 1121 (2011)
Rewriting of rules prohibited
There is a basic difference between filling a gap left by Congress's silence and rewriting rules that Congress has affirmatively and specifically enacted.
U.S.—Lamie v. U.S. Trustee, 540 U.S. 526, 124 S. Ct. 1023, 157 L. Ed. 2d 1024 (2004).
Failure to enact special law
Unlike an administrative agency's denial of an exemption from generally applicable law, which would be entitled to judicial audience, a legislature's failure to enact a special law is itself unreviewable.
U.S.—Board of Educ. of Kiryas Joel Village School Dist. v. Grumet, 512 U.S. 687, 114 S. Ct. 2481, 129 L. Ed. 2d 546, 91 Ed. Law Rep. 810 (1994).

2 U.S.—Diamond v. Chakrabarty, 447 U.S. 303, 100 S. Ct. 2204, 65 L. Ed. 2d 144 (1980).
N.J.—Department of Environmental Protection v. Franklin Tp., 181 N.J. Super. 309, 437 A.2d 353 (Tax Ct. 1981), judgment aff'd, 5 N.J. Tax 476, 1983 WL 507553 (Super. Ct. App. Div. 1983).
N.Y.—Matter of Brian S., 112 Misc. 2d 561, 447 N.Y.S.2d 382 (Fam. Ct. 1982).
As to the court's role in interpreting and construing statutes, see § 414.

3 U.S.—Walters v. City of St. Louis, Mo., 347 U.S. 231, 74 S. Ct. 505, 98 L. Ed. 660 (1954).
Del.—State v. Kamalski, 429 A.2d 1315 (Del. Super. Ct. 1981).
Tex.—Salas v. State, 592 S.W.2d 653 (Tex. Civ. App. Austin 1979).
Wash.—Rodriguez v. Niemeyer, 23 Wash. App. 398, 595 P.2d 952 (Div. 3 1979).

4 U.S.—Evans v. Abney, 396 U.S. 435, 90 S. Ct. 628, 24 L. Ed. 2d 634 (1970); In re Aircrash In Bali, Indonesia on April 22, 1974, 684 F.2d 1301, 11 Fed. R. Evid. Serv. 875 (9th Cir. 1982).
Miss.—Kelly v. Mississippi Valley Gas Co., 397 So. 2d 874, 32 A.L.R.4th 1214 (Miss. 1981).
N.Y.—Museum of Modern Art v. Kirk, 111 Misc. 2d 1074, 448 N.Y.S.2d 93, 3 Ed. Law Rep. 139 (App. Term 1981).
Pa.—Snider v. Thornburgh, 496 Pa. 159, 436 A.2d 593 (1981).

5 Ala.—Alabama Ins. Guar. Ass'n v. Association of General Contractors Self-Insurer's Fund, 80 So. 3d 188 (Ala. 2010).
Iowa—Johnson v. Nelson, 275 N.W.2d 427 (Iowa 1979).

6 U.S.—Parham v. Hughes, 441 U.S. 347, 99 S. Ct. 1742, 60 L. Ed. 2d 269 (1979); Mobil Oil Corp. v. Higginbotham, 436 U.S. 618, 98 S. Ct. 2010, 56 L. Ed. 2d 581 (1978).

7 U.S.—U. S. v. Rutherford, 442 U.S. 544, 99 S. Ct. 2470, 61 L. Ed. 2d 68 (1979); U.S. v. Thirty-Seven (37) Photographs, 402 U.S. 363, 91 S. Ct. 1400, 28 L. Ed. 2d 822 (1971).

8 U.S.—Pearson v. Easy Living, Inc., 534 F. Supp. 884 (S.D. Ohio 1981).
N.J.—Robinson v. Cahill, 69 N.J. 133, 351 A.2d 713 (1975).

9 U.S.—Commissioner of Internal Revenue v. Beck's Estate, 129 F.2d 243 (C.C.A. 2d Cir. 1942).
Haw.—State v. Rodrigues, 63 Haw. 412, 629 P.2d 1111 (1981).

10 U.S.—Commissioner of Internal Revenue v. Beck's Estate, 129 F.2d 243 (C.C.A. 2d Cir. 1942).
As to the creation of remedies by the courts, see § 415.

End of Document

16 C.J.S. Constitutional Law § 414

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

3. Encroachment on, or Interference with, Legislature

a. In General

§ 414. Making, interpreting, and applying statutes—Construction and interpretation

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2472 to 2476

A court does not exercise legislative functions in interpreting, construing, or giving meaning to a legislative act.

The courts may declare the nature and effect of statutes,[1] and a court does not exercise legislative functions in interpreting, construing, or giving meaning to a legislative act.[2] However, the courts may not legislate under the guise of statutory interpretation and construction.[3] Where a statute is plain and unambiguous, the court may not construe or interpret it but must enforce it as written.[4] It is not the court's function to decide what the law ought to be but rather to construe and apply the law as the legislature has enacted it to the facts before the court, and it is the role of the legislature to evaluate public-policy considerations regarding the wisdom of a statute, just as it is its role to cure any unfairness of a statute.[5]

When construing statutes, courts are not at liberty to add words to statutes that were not placed there by the legislature,[6] and a court may not read unwritten language into a statute[7] or read a meaning into a statute that is not there.[8] The courts therefore will not infer substantive terms into the text of a statute that are not already there; rather, the interpretation must be based

on the language used, and a court has no power to rewrite the statute to conform to an intention not expressed.[9] When a statute unambiguously requires a certain result, policy arguments advocating for a different result are better addressed to the legislature.[10]

A court must attempt to give effect to all parts of a statute, and, if it can be avoided, no word, clause, or sentence will be rejected as superfluous or meaningless; it is not within the province of a court to read anything plain, direct, and unambiguous out of a statute.[11] Thus, the court may not substitute, by judicial interpretation, language of its own for the clear, unambiguous language of the statute, so as to change the meaning.[12]

The court's role in construing a statute should ordinarily be to determine the objective meaning of its provisions, and a court may not rewrite a statute to conform to a presumed intent that is not expressed.[13] The fact that Congress might have acted with greater clarity or foresight does not give the courts a carte blanche to redraft statutes in an effort to achieve that which Congress is perceived to have failed to do, nor is the judiciary licensed to attempt to soften the clear import of Congress's chosen words whenever a court believes those words lead to a harsh result.[14]

Construction to avoid constitutional issues.

The canon favoring constructions of statutes to avoid constitutional issues does not license a court to usurp the policymaking and legislative functions of duly elected representatives.[15] Thus, although statutes should be construed to avoid constitutional questions, this interpretative canon is not a license for the judiciary to rewrite language enacted by the legislature.[16]

CUMULATIVE SUPPLEMENT

Cases:

Supreme Court's license to interpret statutes does not include the power to engage in freewheeling judicial policymaking. Pereida v. Wilkinson, 141 S. Ct. 754 (2021).

Courts are not free to rewrite clear statutes under the banner of their own policy concerns. Azar v. Allina Health Services, 139 S. Ct. 1804 (2019).

It is not a court's function to rewrite a constitutionally valid statutory text under the banner of speculation about what Congress might have intended. Wisconsin Central Ltd. v. U.S., 138 S. Ct. 2067 (2018).

Respect for the constitutional separation of powers counsels restraint in courts finding irreconcilable conflicts in statutes drafted by Congress, and allowing judges to pick and choose between statutes risks transforming them from expounders of what the law is into policymakers choosing what the law should be. Epic Systems Corp. v. Lewis, 138 S. Ct. 1612 (2018).

The Supreme Court is not free to rewrite a statute to the Government's liking. National Ass'n of Mfrs. v. Department of Defense, 138 S. Ct. 617 (2018).

While it is the job of the courts to apply faithfully the law Congress has written, it is never the courts' job to rewrite a constitutionally valid statutory text under the banner of speculation about what Congress might have done had it faced a question that, on everyone's account, it never faced. Henson v. Santander Consumer USA Inc., 137 S. Ct. 1718 (2017).

Proper role of the judiciary is to apply, not amend, the work of the People's representatives. Henson v. Santander Consumer USA Inc., 137 S. Ct. 1718 (2017).

Nation's constitutional structure does not permit the Supreme Court to rewrite the statute that Congress has enacted. Puerto Rico v. Franklin California Tax-Free Trust, 136 S. Ct. 1938 (2016).

Courts are not at liberty to rewrite a statute because they might deem its effects susceptible of improvement. Preston v. Midland Credit Management, Inc., 948 F.3d 772 (7th Cir. 2020).

[END OF SUPPLEMENT]

Footnotes

1 § 380.

2 Cal.—Anderson Union High Sch. Dist. v. Schreder, 56 Cal. App. 3d 453, 128 Cal. Rptr. 529 (3d Dist. 1976).
Ky.—O'Leary v. Com., 441 S.W.2d 150 (Ky. 1969).

3 U.S.—RAM v. Blum, 533 F. Supp. 933 (S.D. N.Y. 1982); de los Santos v. Immigration and Naturalization Service, 525 F. Supp. 655 (S.D. N.Y. 1981), judgment aff'd, 690 F.2d 56, 63 A.L.R. Fed. 513 (2d Cir. 1982).
Cal.—Peake v. Underwood, 227 Cal. App. 4th 428, 173 Cal. Rptr. 3d 624 (4th Dist. 2014), as modified on denial of reh'g, (July 17, 2014).
Md.—Taylor v. Mayor and City Council of Baltimore, 51 Md. App. 435, 443 A.2d 657 (1982).
Neb.—In re Heartwell School Dist. R-4, 211 Neb. 453, 319 N.W.2d 68, 4 Ed. Law Rep. 277 (1982).
Tex.—Christus Health Gulf Coast v. Aetna, Inc., 397 S.W.3d 651 (Tex. 2013).

4 Fla.—Koster v. Sullivan, 2015 WL 463509 (Fla. 2015).
Idaho—Barnes v. Hinton, 103 Idaho 619, 651 P.2d 553 (Ct. App. 1982).
Ind.—Whitacre v. State, 274 Ind. 554, 412 N.E.2d 1202 (1980).
Md.—WFS Financial, Inc. v. Mayor and City Council of Baltimore, 402 Md. 1, 935 A.2d 385 (2007).
Mass.—Joslyn v. Chang, 445 Mass. 344, 837 N.E.2d 1107 (2005).
N.J.—State v. Lawless, 214 N.J. 594, 70 A.3d 647 (2013).
N.Y.—Matter of Kleefeld's Estate, 55 N.Y.2d 253, 448 N.Y.S.2d 456, 433 N.E.2d 521 (1982).
Cannot disregard clear language
The Supreme Court has no roving license, in even ordinary cases of statutory interpretation, to disregard clear language simply on the view that Congress must have intended something broader.
U.S.—Michigan v. Bay Mills Indian Community, 134 S. Ct. 2024, 188 L. Ed. 2d 1071 (2014).
Must apply statute as written
The role of the Supreme Court is to apply a statute as it is written even if the Court thinks some other approach might accord with good policy.
U.S.—Burrage v. U.S., 134 S. Ct. 881, 187 L. Ed. 2d 715 (2014).

5 U.S.—Lexington Ins. Co. v. Rugg & Knopp, Inc., 165 F.3d 1087 (7th Cir. 1999) (applying Wisconsin law).
Policy concerns are for the legislature, not courts
Ala.—Cato v. Craighead County Circuit Court, 2009 Ark. 334, 322 S.W.3d 484 (2009).
Kan.—Seaboard Corp. v. Marsh Inc., 295 Kan. 384, 284 P.3d 314 (2012).
As to the nature and scope of legislative powers, generally, see § 281.
As to the general prohibition against amendment or alteration of statutes by the courts, see § 418.
As to the general prohibition against inquiry by the courts into the wisdom of legislation, see § 426.

6 § 418.

7 Va.—George v. Com., 51 Va. App. 137, 655 S.E.2d 43 (2008), judgment aff'd, 276 Va. 767, 667 S.E.2d 779, 57 A.L.R.6th 803 (2008).
Wash.—State v. Ritts, 94 Wash. App. 784, 973 P.2d 493 (Div. 3 1999).

8 Neb.—In re Estate of Krumwiede, 264 Neb. 378, 647 N.W.2d 625 (2002).

9 Utah—I.M.L. v. State, 2002 UT 110, 61 P.3d 1038 (Utah 2002).

10 Alaska—Ward v. State, Dept. of Public Safety, 288 P.3d 94 (Alaska 2012).

11 Neb.—Volquardson v. Hartford Ins. Co. of the Midwest, 264 Neb. 337, 647 N.W.2d 599 (2002).

12 Ga.—Richardson v. State, 276 Ga. 639, 581 S.E.2d 528 (2003).

13 Cal.—People v. Statum, 28 Cal. 4th 682, 122 Cal. Rptr. 2d 572, 50 P.3d 355 (2002).

14 U.S.—U.S. v. Locke, 471 U.S. 84, 105 S. Ct. 1785, 85 L. Ed. 2d 64 (1985).

15 U.S.—Heckler v. Mathews, 465 U.S. 728, 104 S. Ct. 1387, 79 L. Ed. 2d 646 (1984).

16 U.S.—Chapman v. U.S., 500 U.S. 453, 111 S. Ct. 1919, 114 L. Ed. 2d 524 (1991); U.S. v. Albertini, 472 U.S. 675, 105 S. Ct. 2897, 86 L. Ed. 2d 536 (1985).

End of Document

16 C.J.S. Constitutional Law § 415

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

3. Encroachment on, or Interference with, Legislature

a. In General

§ 415. Making, interpreting, and applying statutes—Creation of rights, remedies, or policies

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2472 to 2476

The courts cannot create obligations, bring rights into being, or determine social or economic policies.

The courts cannot create obligations,[1] any more than they are able to bring into being rights[2] or remedies.[3] The courts generally may not add remedies to those already provided by statute,[4] and the decision to create a private right of action is one better left to legislative judgment in the great majority of cases.[5] The United States Supreme Court is not free to fashion remedies that Congress has specifically chosen not to extend.[6] Federal courts cannot reach out to award remedies when the Constitution or laws of the United States do not support a cause of action.[7] However, unlike the finding of a cause of action, which authorizes a court to hear a case or controversy, discretion to award appropriate relief involves no such increase in judicial power, and thus, the exercise of such discretion does not violate separation-of-powers principles.[8]

It generally is not for the courts to create immunities,[9] or abolish them,[10] or to create penalties.[11] It is for the legislature and not the courts to determine how rights created by the legislature should be enforced[12] and to fix the penalty for the violation of a statute.[13] The courts may not add a sanction to those specifically prescribed for an offense where to do so would not further, but would hinder, the purpose of the statute.[14] If a statute does not specify a consequence for noncompliance with statutory timing provisions, the federal courts will not in the ordinary course impose their own coercive sanction.[15]

It is not the province of the judiciary to attempt to inaugurate social or political reforms,[16] or to determine social or economic policies.[17] Like political questions, policy questions are for the legislature and not for the courts.[18]

Implied private remedy.

The recognition of an implied private remedy under a statute does not violate the separation-of-powers doctrine.[19]

CUMULATIVE SUPPLEMENT

Cases:

If there are sound reasons to think Congress might doubt the efficacy or necessity of a damages remedy as part of the system for enforcing the law and correcting a wrong, the courts must refrain from creating the remedy in order to respect the role of Congress in determining the nature and extent of federal-court jurisdiction under Article III. U.S.C.A. Const. Art. 3, § 1 et seq. Ziglar v. Abbasi, 2017 WL 2621317 (U.S. 2017).

Principles supporting state constitution's Separation of Powers Clause preclude courts from having the quintessentially legislative prerogative to make rules of law retroactive or prospective as they sees fit. Nev. Const. art. 3, § 1. Nevada Yellow Cab Corporation v. Eighth Judicial District Court in and for County of Clark, 383 P.3d 246, 132 Nev. Adv. Op. No. 77 (Nev. 2016).

[END OF SUPPLEMENT]

Footnotes

1 Del.—General Motors Corp. v. Vaccarini, 48 Del. 80, 97 A.2d 550 (1953).
N.Y.—Hoenig v. McGoldrick, 281 A.D. 663, 117 N.Y.S.2d 535 (1st Dep't 1952).
Judicial legislation
If, in the domain of economic and social controversies, a court were, under the guise of the application of the doctrine of public policy, in effect to enact provisions which it might consider expedient and desirable, such action would be nothing short of judicial legislation, and each such court would be creating positive laws according to the particular views and idiosyncrasies of its members.
Pa.—Conway v. Cutler Group, Inc., 99 A.3d 67 (Pa. 2014).

2 U.S.—Morgan v. Kennedy, 331 F. Supp. 861 (D. Neb. 1971).
Ark.—Files v. Hill, 268 Ark. 106, 594 S.W.2d 836 (1980).
Conn.—Steadwell v. Warden, Connecticut Correctional Inst., 186 Conn. 153, 439 A.2d 1078 (1982).
N.Y.—Matter of Adoption of Baby Girl, 103 Misc. 2d 542, 426 N.Y.S.2d 398 (Fam. Ct. 1980).

3 U.S.—U.S. for Benefit and on Behalf of Glynn v. Capeletti Bros., Inc., 621 F.2d 1309, 29 Fed. R. Serv. 2d 1306 (5th Cir. 1980).
Conn.—Steadwell v. Warden, Connecticut Correctional Inst., 186 Conn. 153, 439 A.2d 1078 (1982).
N.D.—R. B. J. Apartments, Inc. v. Gate City Sav. & Loan Ass'n, 315 N.W.2d 284 (N.D. 1982).

Admiralty

U.S.—Northwest Airlines, Inc. v. Transport Workers Union of America, AFL-CIO, 451 U.S. 77, 101 S. Ct. 1571, 67 L. Ed. 2d 750 (1981).

4 U.S.—National R. R. Passenger Corp. v. National Ass'n of R. R. Passengers, 414 U.S. 453, 94 S. Ct. 690, 38 L. Ed. 2d 646 (1974); U.S. v. City of Philadelphia, 644 F.2d 187 (3d Cir. 1980).

Neb.—State v. Ellis, 281 Neb. 571, 799 N.W.2d 267 (2011).

Remedial powers of equity court

Although the remedial powers of an equity court must be adequate to the task, they are not unlimited, and one of the most important considerations governing the exercise of equitable power is proper respect for the integrity and function of local government institutions, especially where those institutions are ready, willing, and, but for the operation of a state law curtailing their powers, able to remedy a deprivation of constitutional rights themselves.

U.S.—Missouri v. Jenkins, 495 U.S. 33, 110 S. Ct. 1651, 109 L. Ed. 2d 31, 59 Ed. Law Rep. 298 (1990).

5 U.S.—Sosa v. Alvarez-Machain, 542 U.S. 692, 124 S. Ct. 2739, 159 L. Ed. 2d 718 (2004).

Dramshop action

Utah—Yost v. State, 640 P.2d 1044 (Utah 1981).

Privacy field

From a standpoint of sound public policy, creation of new rights of action in the field of individual privacy is a question for consideration and determination of the legislature.

R.I.—Kalian v. People Acting Through Community Effort, Inc. (PACE), 122 R.I. 429, 408 A.2d 608 (1979).

Nonmarital relationships

Judicial restraint requires that the legislature, rather than the judiciary, is the appropriate forum for addressing the issue of formulating remedies appropriate to a nonmarital relationship.

Mich.—Carnes v. Sheldon, 109 Mich. App. 204, 311 N.W.2d 747 (1981).

6 U.S.—Landgraf v. USI Film Products, 511 U.S. 244, 114 S. Ct. 1522, 128 L. Ed. 2d 229 (1994).

7 U.S.—Franklin v. Gwinnett County Public Schools, 503 U.S. 60, 112 S. Ct. 1028, 117 L. Ed. 2d 208, 72 Ed. Law Rep. 32 (1992).

Embellishment of deficient allegations of standing

A federal court is powerless to create its own jurisdiction by embellishing otherwise deficient allegations of standing.

U.S.—Whitmore v. Arkansas, 495 U.S. 149, 110 S. Ct. 1717, 109 L. Ed. 2d 135 (1990).

8 U.S.—Franklin v. Gwinnett County Public Schools, 503 U.S. 60, 112 S. Ct. 1028, 117 L. Ed. 2d 208, 72 Ed. Law Rep. 32 (1992).

As to the separation-of-powers doctrine, generally, see § 272.

9 Iowa—Haynes v. Presbyterian Hospital Ass'n, 241 Iowa 1269, 45 N.W.2d 151 (1950).

N.M.—State v. Thoreen, 91 N.M. 624, 1978-NMCA-024, 578 P.2d 325 (Ct. App. 1978).

Creation of statutory exclusion

It is not the court's role to acknowledge a statutory exclusion when the legislature painstakingly has created a complete statute.

Conn.—Laliberte v. United Sec., Inc., 261 Conn. 181, 801 A.2d 783 (2002).

10 U.S.—Stoehr v. Whipple, 405 F. Supp. 1249 (D. Neb. 1976).

11 Idaho—Jordan v. Pearce, 91 Idaho 687, 429 P.2d 419 (1967).

Pa.—Smith v. Harleysville Ins. Co., 275 Pa. Super. 246, 418 A.2d 705 (1980), order aff'd, 494 Pa. 515, 431 A.2d 974 (1981).

Tex.—A. B. Lewis Co. v. Jackson, 199 S.W.2d 853 (Tex. Civ. App. Galveston 1947), writ refused n.r.e.

12 U.S.—Switchmen's Union of North America v. National Mediation Board, 320 U.S. 297, 64 S. Ct. 95, 88 L. Ed. 61 (1943).

Me.—Ace Tire Co., Inc. v. Municipal Officers of City of Waterville, 302 A.2d 90 (Me. 1973).

Mich.—Lamphere Schools v. Lamphere Federation of Teachers, 67 Mich. App. 331, 240 N.W.2d 792 (1976), judgment aff'd, 400 Mich. 104, 252 N.W.2d 818, 84 A.L.R.3d 314 (1977).

New rule or remedy

In almost any statutory scheme, there may be a need for judicial interpretation of ambiguous or incomplete provisions, but authority to construe a statute is fundamentally different from authority to fashion a new rule or to provide a new remedy which Congress has decided not to adopt.

U.S.—Northwest Airlines, Inc. v. Transport Workers Union of America, AFL-CIO, 451 U.S. 77, 101 S. Ct. 1571, 67 L. Ed. 2d 750 (1981).

13 U.S.—L.P. Steuart & Bro. v. Bowles, 322 U.S. 398, 64 S. Ct. 1097, 88 L. Ed. 1350 (1944).
Colo.—Gladden v. Guyer, 162 Colo. 451, 426 P.2d 953 (1967).
Mich.—Lamphere Schools v. Lamphere Federation of Teachers, 67 Mich. App. 331, 240 N.W.2d 792 (1976), judgment aff'd, 400 Mich. 104, 252 N.W.2d 818, 84 A.L.R.3d 314 (1977).
As to the inherent power of the courts, see § 387.

14 U.S.—A.C. Frost & Co. v. Coeur D'Alene Mines Corporation, 312 U.S. 38, 61 S. Ct. 414, 85 L. Ed. 500 (1941).

15 U.S.—Barnhart v. Peabody Coal Co., 537 U.S. 149, 123 S. Ct. 748, 154 L. Ed. 2d 653 (2003).

16 N.J.—Matter of Lembo, 151 N.J. Super. 242, 376 A.2d 971 (App. Div. 1977).

17 U.S.—Kahn v. Shevin, 416 U.S. 351, 94 S. Ct. 1734, 40 L. Ed. 2d 189 (1974); Evans v. Abney, 396 U.S. 435, 90 S. Ct. 628, 24 L. Ed. 2d 634 (1970).
Mich.—O'Donnell v. State Farm Mut. Auto. Ins. Co., 404 Mich. 524, 273 N.W.2d 829, 10 A.L.R.4th 958 (1979).
N.J.—Chamber of Commerce of U. S. v. State, 89 N.J. 131, 445 A.2d 353 (1982).
Wis.—State v. Amoco Oil Co., 97 Wis. 2d 226, 293 N.W.2d 487 (1980).
Legislature sets antitrust policy
Kan.—O'Brien v. Leegin Creative Leather Products, Inc., 294 Kan. 318, 277 P.3d 1062 (2012).

18 U.S.—Williamson v. Lee Optical of Oklahoma Inc., 348 U.S. 483, 75 S. Ct. 461, 99 L. Ed. 563 (1955); U.S. for Benefit and on Behalf of Glynn v. Capeletti Bros., Inc., 621 F.2d 1309, 29 Fed. R. Serv. 2d 1306 (5th Cir. 1980).
Mich.—People v. Gilbert, 414 Mich. 191, 324 N.W.2d 834 (1982).
As to political questions, see §§ 392 to 411.
Coverage decisions
If Congress's coverage decisions are mistaken as a matter of policy, it is for Congress to change them; the Supreme Court should not legislate for Congress.
U.S.—Pacific Operators Offshore, LLP v. Valladolid, 132 S. Ct. 680, 181 L. Ed. 2d 675 (2012).

19 U.S.—Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran, 456 U.S. 353, 102 S. Ct. 1825, 72 L. Ed. 2d 182 (1982).
As to the separation-of-powers doctrine, generally, see § 272.

End of Document

16 C.J.S. Constitutional Law § 416

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

3. Encroachment on, or Interference with, Legislature

a. In General

§ 416. Interpreting or changing common law

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2472 to 2476

Generally, it is for the courts to determine common law, and courts may adopt and apply the rules of common law to new situations. Courts cannot, however, grant recoveries or authorize actions unknown to the common law.

It generally is for the courts to determine what the rules of the common law are.[1] However, while the courts may adopt and apply the rules of common law to new situations,[2] they ordinarily do not have authority to grant recoveries or to authorize actions unknown to the common law.[3] According to some authorities, changes in the common law should be made by the legislature rather than by the courts,[4] particularly where a change in the common law rule of governmental immunity from liability for torts is concerned.[5]

Footnotes

1 Cal.—Maryland Casualty Co. v. Fidelity & Casualty Co. of NewYork, 71 Cal. App. 492, 236 P. 210 (1st Dist. 1925).
Minn.—Schumann v. McGinn, 307 Minn. 446, 240 N.W.2d 525 (1976).
Applicability of common law rule
Colo.—Biggerstaff v. Zimmerman, 108 Colo. 194, 114 P.2d 1098 (1941).
2 Cal.—Grimshaw v. Ford Motor Co., 119 Cal. App. 3d 757, 174 Cal. Rptr. 348 (4th Dist. 1981).
N.Y.—Rozell v. Rozell, 281 N.Y. 106, 22 N.E.2d 254, 123 A.L.R. 1015 (1939).
3 Ga.—Henry Grady Hotel Co. v. Sturgis, 70 Ga. App. 379, 28 S.E.2d 329 (1943).
4 U.S.—DeCosta v. Columbia Broadcasting System, Inc., 520 F.2d 499 (1st Cir. 1975).
Alaska—Arctic Structures, Inc. v. Wedmore, 605 P.2d 426 (Alaska 1979).
Ill.—Beagley v. Andel, 58 Ill. App. 3d 588, 16 Ill. Dec. 154, 374 N.E.2d 929 (1st Dist. 1978).
N.C.—Skinner v. Whitley, 281 N.C. 476, 189 S.E.2d 230 (1972).
Federal common law
U.S.—Northwest Airlines, Inc. v. Transport Workers Union of America, AFL-CIO, 451 U.S. 77, 101 S. Ct. 1571, 67 L. Ed. 2d 750 (1981).
Interspousal immunity
The judicially created rule of interspousal immunity can be judicially abrogated.
Ga.—Bradley v. Tenneco Oil Co., 146 Ga. App. 161, 245 S.E.2d 862 (1978).
Mass.—Lewis v. Lewis, 370 Mass. 619, 351 N.E.2d 526, 92 A.L.R.3d 890 (1976).
Immunity of charitable institutions from tort liability
Courts, having created immunity of charitable institutions from tort liability for negligence of their employees, on the basis of public policy, may abolish such immunity without legislative action.
Ind.—Harris v. Young Women's Christian Ass'n of Terre Haute, 250 Ind. 491, 237 N.E.2d 242 (1968).
Wash.—Pierce v. Yakima Valley Memorial Hosp. Ass'n, 43 Wash. 2d 162, 260 P.2d 765 (1953).
5 N.C.—Vaughn v. Durham County, 34 N.C. App. 416, 240 S.E.2d 456 (1977).
Tex.—Barr v. Bernhard, 562 S.W.2d 844 (Tex. 1978).
Wash.—Coulter v. State, 93 Wash. 2d 205, 608 P.2d 261 (1980).
Wis.—Fiala v. Voight, 93 Wis. 2d 337, 286 N.W.2d 824 (1980).
Recognition by statute
A statute clearly recognizing the judicial doctrine of sovereign immunity precluded judicial abolition of the doctrine.
Vt.—Lomberg v. Crowley, 138 Vt. 420, 415 A.2d 1324 (1980).
Abolishment not precluded by constitutional provision
The language of a state constitutional provision did not preclude a court from judicially abolishing the common law doctrine of sovereign immunity.
N.D.—Bulman v. Hulstrand Const. Co., Inc., 521 N.W.2d 632 (N.D. 1994).

End of Document

16 C.J.S. Constitutional Law § 417

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

3. Encroachment on, or Interference with, Legislature

a. In General

§ 417. Invalidation, annulment, and repeal of statutes

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2478

The courts cannot repeal, invalidate, nullify, or refuse to apply a statute unless it is clearly in excess of the legislative powers or contrary to some constitutional prohibition.

The courts are without power to repeal[1] or suspend[2] a valid statute. It is not the role of a court to act as the overseer of all legislative action and declare statutes unconstitutional merely because it believes the statutes could be drafted better or more fairly applied.[3] Additionally, the courts may not disregard or refuse to apply an applicable statute.[4]

The legislature's power will not be negated by the courts unless a legislative enactment violates constitutional guarantees.[5] The courts cannot invalidate or nullify by judicial repeal a legislative enactment unless it is clearly in excess of the legislative powers or contrary to some express or implied constitutional prohibition.[6]

In determining the constitutionality of a statute, the power of the judiciary is limited to deciding whether it is within the scope of the constitutional powers of the legislative department.[7] The judiciary will interfere with acts of the legislative body only where they are beyond constitutional bounds.[8] Accordingly, to justify such interference, a legislative usurpation of power should be clear, palpable, or oppressive.[9]

It is for the legislature and not for the courts to determine what means will be employed to accomplish ends within its constitutional powers.[10] It remains for the court only to decide whether the means adopted by the legislature are reasonably adapted to the end sought[11] and are within its constitutional powers.[12]

On the other hand, the courts are bound to give effect to constitutional restrictions on legislative powers,[13] and the greatest deterrent to the enactment of unconstitutional statutes by the legislature is the power of courts to invalidate statutes.[14] Thus, while the United States Supreme Court does not ignore Congress's conclusion about an issue of constitutional law, it is the Supreme Court's task in the end to decide whether Congress has violated the United States Constitution, particularly where Congress has concluded that its product does not violate the First Amendment.[15]

CUMULATIVE SUPPLEMENT

Cases:

When Congress passes an unconstitutionally vague law, the role of courts under the Constitution is not to fashion a new, clearer law to take its place, but to treat the law as a nullity and invite Congress to try again. United States v. Davis, 139 S. Ct. 2319 (2019).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—National Life & Acc. Ins. Co. v. U. S., 524 F.2d 559 (6th Cir. 1975); Stonehill Communications, Inc. v. Martuge, 512 F. Supp. 349 (S.D. N.Y. 1981).
Okla.—Allgood v. Allgood, 1981 OK 21, 626 P.2d 1323 (Okla. 1981).
Tex.—Garcia v. Texas Instruments, Inc., 610 S.W.2d 456, 30 U.C.C. Rep. Serv. 401, 20 A.L.R.4th 900 (Tex. 1980).

2 Fla.—Beach v. Kirk, 138 Fla. 80, 189 So. 263 (1938).
Tex.—State v. Ferguson, 133 Tex. 60, 125 S.W.2d 272 (1939).

3 Colo.—People v. Goodale, 78 P.3d 1103 (Colo. 2003).
Improvidence of declaration of facial invalidity
In the absence of weighty countervailing circumstances, it is improvident for a court to invalidate a statute on its face.
Conn.—Hall v. Gilbert and Bennett Mfg. Co., Inc., 241 Conn. 282, 695 A.2d 1051 (1997).
Presumption of validity
In keeping with the strong presumption of validity enjoyed by all duly enacted legislation, as well as the need to preserve the delicate balance critical to a proper functioning of a tripartite system of government, the state supreme court exercises restraint when asked to invalidate legislation, particularly where to do so could intrude upon the prerogatives of a sister branch of government.
Pa.—City of Philadelphia v. Com., 575 Pa. 542, 838 A.2d 566 (2003).

4 U.S.—Ex parte Wienke, 31 F. Supp. 733 (N.D. Cal. 1940).

Ill.—People ex rel. Ferry v. Palmer, 1 Ill. 2d 384, 115 N.E.2d 609 (1953).

N.Y.—In re Asker, 284 A.D. 712, 134 N.Y.S.2d 685 (4th Dep't 1954), order aff'd, 309 N.Y. 983, 132 N.E.2d 895 (1956).

5 W. Va.—State ex rel. Blankenship v. Richardson, 196 W. Va. 726, 474 S.E.2d 906 (1996).

6 U.S.—Nixon v. Administrator of General Services, 433 U.S. 425, 97 S. Ct. 2777, 53 L. Ed. 2d 867 (1977); Labine v. Vincent, 401 U.S. 532, 91 S. Ct. 1017, 28 L. Ed. 2d 288 (1971).

Ill.—People v. Copeland, 92 Ill. App. 3d 475, 47 Ill. Dec. 860, 415 N.E.2d 1173 (1st Dist. 1980).

Wash.—State v. Smith, 93 Wash. 2d 329, 610 P.2d 869 (1980).

7 Ky.—Com. ex rel. Hancock v. Holmes, 509 S.W.2d 258 (Ky. 1974).

Miss.—Lovorn v. Hathorn, 365 So. 2d 947 (Miss. 1978).

Wash.—Aetna Life Ins. Co. v. Washington Life and Disability Ins. Guaranty Ass'n, 83 Wash. 2d 523, 520 P.2d 162 (1974).

Wis.—State ex rel. Ft. Howard Paper Co. v. State Lake Dist. Bd. of Review, 82 Wis. 2d 491, 263 N.W.2d 178 (1978).

8 Colo.—People v. Hoinville, 191 Colo. 357, 553 P.2d 777 (1976).

Haw.—Schwab v. Ariyoshi, 58 Haw. 25, 564 P.2d 135 (1977).

Mich.—People v. Schmidt, 86 Mich. App. 574, 272 N.W.2d 732 (1978).

Tenn.—Baldwin v. Knight, 569 S.W.2d 450 (Tenn. 1978).

Clearly contrary to express or implied constitutional prohibition

Fla.—Crist v. Florida Ass'n of Criminal Defense Lawyers, Inc., 978 So. 2d 134 (Fla. 2008).

Grave and delicate duty

Striking down an Act of Congress is the gravest and most delicate duty that a court is called on to perform, and it does not do so lightly.

U.S.—Shelby County, Ala. v. Holder, 133 S. Ct. 2612, 186 L. Ed. 2d 651 (2013); Stauffer v. Brooks Bros. Group, Inc., 758 F.3d 1314 (Fed. Cir. 2014).

Due restraint

In considering the constitutionality of a legislative enactment, courts must exercise due restraint in recognition of the principle of the separation of powers in government among the judicial, legislative, and Executive Branches.

W. Va.—Johnson v. Board of Stewards of Charles Town Races, 225 W. Va. 340, 693 S.E.2d 93 (2010).

Partial invalidity

The doctrine of severability is one to be applied with caution, for, in enforcement of valid elements of a statute containing invalid elements also, there is a danger of judicial usurpation of legislative power.

N.J.—State v. Doto, 10 N.J. 318, 91 A.2d 337 (1952).

9 Minn.—Federal Distillers, Inc. v. State, 304 Minn. 28, 229 N.W.2d 144 (1975).

Miss.—Trainer v. State, 930 So. 2d 373 (Miss. 2006).

N.J.—Reingold v. Harper, 7 N.J. Super. 525, 72 A.2d 369 (Ch. Div. 1950), judgment aff'd, 6 N.J. 182, 78 A.2d 54 (1951).

N.Y.—Humbeutel v. City of New York, 125 N.Y.S.2d 198 (Sup 1953), judgment aff'd, 283 A.D. 1011, 131 N.Y.S.2d 445 (1st Dep't 1954), judgment aff'd, 308 N.Y. 904, 126 N.E.2d 569 (1955).

Plain showing that legislature exceeded its constitutional bounds

U.S.—U.S. v. Brunner, 726 F.3d 299 (2d Cir. 2013); U.S. v. Coppock, 765 F.3d 921 (8th Cir. 2014).

10 U.S.—Berman v. Parker, 348 U.S. 26, 75 S. Ct. 98, 99 L. Ed. 27 (1954).

Ga.—Wilson v. Board of Regents of University System of Georgia, 246 Ga. 649, 272 S.E.2d 496 (1980).

Ill.—People v. Copeland, 92 Ill. App. 3d 475, 47 Ill. Dec. 860, 415 N.E.2d 1173 (1st Dist. 1980).

11 U.S.—Heart of Atlanta Motel, Inc. v. U. S., 379 U.S. 241, 85 S. Ct. 348, 13 L. Ed. 2d 258 (1964).

12 N.Y.—East New York Sav. Bank v. Hahn, 293 N.Y. 622, 59 N.E.2d 625 (1944), judgment aff'd, 326 U.S. 230, 66 S. Ct. 69, 90 L. Ed. 34, 160 A.L.R. 1279 (1945).

13 Fla.—Brown v. State, 358 So. 2d 16 (Fla. 1978).

Wyo.—Washakie County School Dist. No. One v. Herschler, 606 P.2d 310 (Wyo. 1980).

14 U.S.—Illinois v. Krull, 480 U.S. 340, 107 S. Ct. 1160, 94 L. Ed. 2d 364 (1987).

15 U.S.—Sable Communications of California, Inc. v. F.C.C., 492 U.S. 115, 109 S. Ct. 2829, 106 L. Ed. 2d 93 (1989).

End of Document

16 C.J.S. Constitutional Law § 418

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

3. Encroachment on, or Interference with, Legislature

a. In General

§ 418. Amendment or alteration of statutes

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2473

The courts cannot add to, subtract from, or amplify the terms of a statute, or otherwise amend it by way of construction, nor can they supply omissions or correct defects in a legislative act.

Courts must take a statute as they find it.[1] The amendment of statutes is a legislative and not a judicial function,[2] and the courts therefore are not empowered to amend statutes.[3] In other words, it ordinarily is not for the courts to change the law, but only to apply it,[4] and a court cannot change the language of a statute.[5] Accordingly, the courts cannot add to, subtract from, or amplify the terms of a statute or otherwise amend it by way of construction,[6] particularly where the change is one which the legislature has considered and rejected.[7]

It is not within the province of the courts to read a meaning into a statute that is not there or to read anything direct and plain out of a statute.[8] Thus, when construing statutes, courts are not at liberty to add words to statutes that were not placed there

by the legislature,[9] and they cannot eliminate, delete, or disregard words found in a statute.[10] Furthermore, the court cannot by construction change the meaning[11] or enlarge or restrict the application[12] of a clear and unambiguous statute.

The courts cannot create, enlarge, restrict, or eliminate exceptions, qualifications, conditions, requirements, or limitations in a statute.[13] Similarly, the courts cannot supply omissions or correct defects in a legislative act.[14]

CUMULATIVE SUPPLEMENT

Cases:

Rules aiming for harmony over conflict in statutory interpretation for federal statutes grow from an appreciation that it is the job of Congress by legislation, not the Supreme Court by supposition, both to write the laws and to repeal them. Epic Systems Corp. v. Lewis, 138 S. Ct. 1612 (2018).

To supply statutory omissions transcends the judicial function. Nichols v. U.S., 136 S. Ct. 1113 (2016).

Statute exempting taxicab drivers from minimum wage requirements was repealed when minimum wage amendment to state constitution took effect, not when Supreme Court decided that the amendment impliedly repealed the statute; Supreme Court's function was to declare what the law was, not to create the law. Nev. Const. art. 15, § 16; Nev. Rev. St. § 608.250(2)(e). Nevada Yellow Cab Corporation v. Eighth Judicial District Court in and for County of Clark, 383 P.3d 246, 132 Nev. Adv. Op. No. 77 (Nev. 2016).

Courts are not at liberty to stretch the meaning of a statute in a manner that would contravene the legislature's intent. Neal v. Fairfax County Police Department, 849 S.E.2d 123 (Va. 2020).

[END OF SUPPLEMENT]

Footnotes

1 Cal.—Tower Lane Properties v. City of Los Angeles, 224 Cal. App. 4th 262, 168 Cal. Rptr. 3d 358 (2d Dist. 2014), review denied, (May 21, 2014).
Del.—Dambro v. Meyer, 974 A.2d 121 (Del. 2009).
Ky.—Roberts v. Sticklen, 2014 WL 6998301 (Ky. Ct. App. 2014).

2 U.S.—U.S. v. American-Foreign S. S. Corp., 363 U.S. 685, 80 S. Ct. 1336, 4 L. Ed. 2d 1491 (1960).
Ark.—National Baptist Convention, U.S. A., Inc. v. Arkansas Employment Sec. Division, 3 Ark. App. 189, 623 S.W.2d 852 (1981), judgment aff'd, 275 Ark. 374, 630 S.W.2d 31 (1982).
Mo.—Treme v. St. Louis County, 609 S.W.2d 706 (Mo. Ct. App. E.D. 1980).
Tex.—City of Rockwall v. Hughes, 246 S.W.3d 621 (Tex. 2008).

3 U.S.—In re Intern. Business Machines Corp., 687 F.2d 591, 34 Fed. R. Serv. 2d 958 (2d Cir. 1982);
U.S.—U.S. v. A.S.R., 2015 WL 328339 (E.D. Wis. 2015).
Neb.—In re Heartwell School Dist. R-4, 211 Neb. 453, 319 N.W.2d 68, 4 Ed. Law Rep. 277 (1982).
Tenn.—Britt v. Dyer's Employment Agency, Inc., 396 S.W.3d 519 (Tenn. 2013).
As to the general prohibition against the creation of rights or remedies by the courts, see § 415.

4 Conn.—Connecticut Podiatric Medical Ass'n v. Health Net of Connecticut, Inc., 302 Conn. 464, 28 A.3d 958 (2011).
Minn.—Johnson v. Johnson, 277 N.W.2d 208 (Minn. 1979).

5 U.S.—Atwell v. Merit Systems Protection Bd., 670 F.2d 272 (D.C. Cir. 1981).

Ill.—Ries v. City of Chicago, 242 Ill. 2d 205, 351 Ill. Dec. 135, 950 N.E.2d 631 (2011).
Md.—Erman v. State, 49 Md. App. 605, 434 A.2d 1030 (1981).

6 U.S.—F.T.C. v. Mandel Brothers, Inc., 359 U.S. 385, 79 S. Ct. 818, 3 L. Ed. 2d 893 (1959); U.S. v. Articles of Animal Drug Containing Diethylstilbestrol, 528 F. Supp. 202 (D. Neb. 1981).
Cal.—Metromedia, Inc. v. City of San Diego, 32 Cal. 3d 180, 185 Cal. Rptr. 260, 649 P.2d 902 (1982).
Kan.—Coe v. Security Nat. Ins. Co., 228 Kan. 624, 620 P.2d 1108 (1980).
As to construction and interpretation of statutes by the courts, generally, see § 414.

Preeminent canon of statutory construction

The preeminent canon of statutory interpretation requires that courts presume that the legislature says in a statute what it means and means in a statute what it says there; if Congress determines later that the plain language of the statute does not accurately reflect the true intent of Congress, it is for Congress to amend the statute. Patriotic Veterans, Inc. v. Indiana, 736 F.3d 1041 (7th Cir. 2013).

Acceleration of effective date

A court cannot accelerate the effective date of a statute.
Pa.—Witmer v. Exxon Corp., 260 Pa. Super. 537, 394 A.2d 1276 (1978), order aff'd, 495 Pa. 540, 434 A.2d 1222 (1981).

7 N.C.—Knuckles v. Spaugh, 26 N.C. App. 340, 215 S.E.2d 825 (1975).
Wis.—Lampada v. State Sand & Gravel Co., 58 Wis. 2d 315, 206 N.W.2d 138 (1973).

8 § 414.

9 U.S.—King v. I. R. S., 688 F.2d 488 (7th Cir. 1982).
Cal.—People v. Gaines, 112 Cal. App. 3d 508, 169 Cal. Rptr. 381 (1st Dist. 1980).
Fla.—Reynolds v. State, 842 So. 2d 46 (Fla. 2002).
Ohio—Domestic Credit Corp. v. Vazquez, 69 Ohio St. 2d 527, 23 Ohio Op. 3d 454, 433 N.E.2d 190 (1982).

Restrictions on discretion to grant or deny permit for speech-related activity

The United States Supreme Court will not write nonbinding limits into a state statute which is silent with respect to restrictions on government official's discretion to grant or deny a permit for speech-related activity.
U.S.—City of Lakewood v. Plain Dealer Pub. Co., 486 U.S. 750, 108 S. Ct. 2138, 100 L. Ed. 2d 771 (1988).

10 U.S.—King v. I. R. S., 688 F.2d 488 (7th Cir. 1982).
Neb.—Ragland v. Norris Public Power Dist., 208 Neb. 492, 304 N.W.2d 55 (1981).
N.Y.—Wagner v. Wagner, 115 Misc. 2d 764, 454 N.Y.S.2d 661 (Sup 1982).

11 Conn.—Muha v. United Oil Co., Inc., 180 Conn. 720, 433 A.2d 1009 (1980).
Neb.—State v. Parmer, 210 Neb. 92, 313 N.W.2d 237 (1981).
N.Y.—Liss v. Liss, 87 A.D.2d 681, 448 N.Y.S.2d 814 (3d Dep't 1982).
Va.—Dowling v. Rowan, 270 Va. 510, 621 S.E.2d 397 (2005).

Different sections of law

The court may not make materially different sections of a law identical by judicial legislation.
Iowa—Shidler v. All American Life & Financial Corp., 298 N.W.2d 318 (Iowa 1980).

12 U.S.—U.S. v. Kasper, 483 F. Supp. 1208 (E.D. Pa. 1980).
Conn.—Doe v. Manson, 183 Conn. 183, 438 A.2d 859 (1981).
D.C.—Allman v. Snyder, 888 A.2d 1161 (D.C. 2005).
Ind.—Williams v. State, 952 N.E.2d 317 (Ind. Ct. App. 2011).
Kan.—Coe v. Security Nat. Ins. Co., 228 Kan. 624, 620 P.2d 1108 (1980).
N.J.—Lourdes Medical Center of Burlington County v. Board of Review, 197 N.J. 339, 963 A.2d 289 (2009).
N.Y.—Drelich v. Kenlyn Homes, Inc., 86 A.D.2d 648, 446 N.Y.S.2d 408 (2d Dep't 1982).

Narrowing by judicial construction

(1) Although the federal courts may, in some circumstances, adopt a narrowing construction to which the law is fairly susceptible, in order to avoid unconstitutionality, the courts must also take care not to trample the legislative or executive province of state authorities by making unduly substantive additions or changes to laws and regulations.
U.S.—Consolidated Cigar Corp. v. Reilly, 218 F.3d 30 (1st Cir. 2000), judgment aff'd in part, rev'd in part on other grounds, 533 U.S. 525, 121 S. Ct. 2404, 150 L. Ed. 2d 532 (2001).
(2) A court cannot ignore the plain import of a congressional enactment, particularly one which was deliberately drafted in the broadest of terms in order to avoid the danger that it would be narrowed by judicial construction.

U.S.—Sinclair Refining Co. v. Atkinson, 370 U.S. 195, 82 S. Ct. 1328, 8 L. Ed. 2d 440 (1962) (overruled in part on other grounds by, Boys Markets, Inc. v. Retail Clerks Union, Local 770, 398 U.S. 235, 90 S. Ct. 1583, 26 L. Ed. 2d 199 (1970)).

Scope of immunity

Where Congress has limited immunity to persons testifying in judicial proceedings, it is not for the courts to extend scope of the immunity.

U.S.—U.S. v. Welden, 377 U.S. 95, 84 S. Ct. 1082, 12 L. Ed. 2d 152 (1964).

13 U.S.—Valley Family Planning v. State of N.D., 661 F.2d 99 (8th Cir. 1981).

Ill.—In re Marriage of Turk, 2014 IL 116730, 382 Ill. Dec. 40, 12 N.E.3d 40 (Ill. 2014).

Md.—Davis v. State, 294 Md. 370, 451 A.2d 107, 6 Ed. Law Rep. 1009 (1982).

Neb.—In re Heartwell School Dist. R-4, 211 Neb. 453, 319 N.W.2d 68, 4 Ed. Law Rep. 277 (1982).

14 Conn.—Thornton Real Estate, Inc. v. Lobdell, 184 Conn. 228, 439 A.2d 946 (1981).

D.C.—Allman v. Snyder, 888 A.2d 1161 (D.C. 2005).

Md.—Employment Sec. Administration v. Browning-Ferris, Inc., 292 Md. 515, 438 A.2d 1356 (1982).

Wash.—Jenkins v. Bellingham Municipal Court, 95 Wash. 2d 574, 627 P.2d 1316 (1981).

Correction of drafting errors

It is beyond the court's province, when construing a statute, to rescue Congress from its drafting errors and to provide for what the court might think is the preferred result.

U.S.—Lamie v. U.S. Trustee, 540 U.S. 526, 124 S. Ct. 1023, 157 L. Ed. 2d 1024 (2004).

End of Document

16 C.J.S. Constitutional Law § 419

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

3. Encroachment on, or Interference with, Legislature

a. In General

§ 419. Application of rules to particular subjects

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2500 to 2529

The rule that the courts may not encroach on the powers and functions of the legislature and may not make, repeal, or change the law applies with respect to various matters.

The general rule that the courts cannot encroach on legislative powers and functions and cannot make, repeal, or amend statutes applies in various areas of the law,[1] including adoption,[2] antitrust matters,[3] arbitration,[4] armed forces and national defense,[5] bankruptcy,[6] and citizens and aliens.[7] The general rule likewise applies with respect to the conservation of natural resources[8] and environmental protection,[9] including matters relating to air[10] and water[11] pollution.

The general rule against judicial encroachment on the legislature's domain applies with respect to education,[12] elections,[13] Indians,[14] insurance,[15] intoxicating liquors,[16] including matters relating to dram shop acts,[17] open public meetings,[18] and public records.[19] The general rule also applies with respect to the employment of labor,[20] the licensing and regulation of various activities, including occupations and professions,[21] labor relations,[22] and workers' compensation and employers'

liability.[23] Furthermore, the general rule against judicial encroachment on the legislature's power to make, repeal, and amend laws is applicable with respect to property,[24] including matters relating to descent and distribution,[25] Social Security and public welfare,[26] and unemployment compensation.[27] Likewise, the general rule applies to torts,[28] including such matters as negligence,[29] comparative negligence,[30] products liability,[31] medical malpractice,[32] and wrongful death actions.[33]

The general rule against judicial encroachment on the legislature's domain also applies with respect to trial- and appellate-court practice and procedure,[34] including matters relating to limitations affecting the time for commencement of litigation,[35] process,[36] venue,[37] evidence,[38] privileges,[39] witnesses,[40] and juries or jurors.[41] The general rule is also applicable to particular matters concerning governmental affairs,[42] such as governmental tort liability;[43] fiscal management, including appropriations and expenditures of public funds;[44] internal revenue;[45] state or local taxation;[46] apportionment, districting, and boundaries;[47] public officers and employees;[48] and zoning and land planning.[49]

CUMULATIVE SUPPLEMENT

Cases:

Courts are not at liberty to jettison Congress' judgment on the timeliness of suit. SCA Hygiene Products Aktiebolag v. First Quality Baby Products, LLC, 137 S. Ct. 954 (2017).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Fullilove v. Klutznick, 448 U.S. 448, 100 S. Ct. 2758, 65 L. Ed. 2d 902 (1980); Diamond v. Chakrabarty, 447 U.S. 303, 100 S. Ct. 2204, 65 L. Ed. 2d 144 (1980).
Mich.—People v. Gilbert, 414 Mich. 191, 324 N.W.2d 834 (1982).
Minn.—Red Owl Stores, Inc. v. Commissioner of Agriculture, 310 N.W.2d 99 (Minn. 1981).
Common law marriage
Pa.—In Interest of Miller, 301 Pa. Super. 511, 448 A.2d 25 (1982).
Prison administration
U.S.—Turner v. Safley, 482 U.S. 78, 107 S. Ct. 2254, 96 L. Ed. 2d 64 (1987).
Commitment as sexually dangerous person
The decision to make a trial by jury a statutory right in a proceeding seeking commitment as a sexually dangerous person lies with the legislature.
Mass.—Com. v. Barboza, 387 Mass. 105, 438 N.E.2d 1064 (1982).

2 Alaska—B.J.B.A. v. M.J.B., 620 P.2d 652 (Alaska 1980).

3 U.S.—National Broiler Marketing Ass'n v. U. S., 436 U.S. 816, 98 S. Ct. 2122, 56 L. Ed. 2d 728 (1978).
Kan.—O'Brien v. Leegin Creative Leather Products, Inc., 294 Kan. 318, 277 P.3d 1062 (2012).

4 Ga.—Brookfield Country Club, Inc. v. St. James-Brookfield, LLC, 287 Ga. 408, 696 S.E.2d 663 (2010).

5 U.S.—Rostker v. Goldberg, 453 U.S. 57, 101 S. Ct. 2646, 69 L. Ed. 2d 478 (1981).

6 U.S.—In re American Pad & Paper Co., 478 F.3d 546 (3d Cir. 2007); In re Stansell, 395 B.R. 457 (Bankr. D. Idaho 2008).

7 U.S.—Fiallo v. Bell, 430 U.S. 787, 97 S. Ct. 1473, 52 L. Ed. 2d 50 (1977).

8 U.S.—Committee for Humane Legislation, Inc. v. Richardson, 540 F.2d 1141 (D.C. Cir. 1976).
Neb.—Fisher v. Lower Platte North Natural Resources Dist., 212 Neb. 196, 322 N.W.2d 403 (1982).

9 U.S.—Monarch Chemical Works, Inc. v. Exon, 466 F. Supp. 639 (D. Neb. 1979).

10 U.S.—Lead Industries Ass'n, Inc. v. Environmental Protection Agency, 647 F.2d 1130 (D.C. Cir. 1980).

11 U.S.—U. S. Steel Corp. v. Train, 556 F.2d 822 (7th Cir. 1977); U.S. v. Eureka Pipeline Co., 401 F. Supp. 934 (N.D. W. Va. 1975).

12 Ohio—Board of Ed. of City School Dist. of City of Cincinnati v. Walter, 58 Ohio St. 2d 368, 12 Ohio Op. 3d 327, 390 N.E.2d 813 (1979).

13 Pa.—In re Owens, 62 Pa. Commw. 281, 436 A.2d 260 (1981).

Tex.—Pickard v. Castillo, 550 S.W.2d 107 (Tex. Civ. App. Corpus Christi 1977).

As to nonjusticiable political questions concerning elections, see § 393.

14 U.S.—Williams v. Lee, 358 U.S. 217, 79 S. Ct. 269, 3 L. Ed. 2d 251 (1959).

As to nonjusticiable political questions concerning Indians, see § 402.

15 U.S.—Hawkeye Chemical Co. v. St. Paul Fire & Marine Ins. Co., 510 F.2d 322 (7th Cir. 1975).

16 Minn.—Federal Distillers, Inc. v. State, 304 Minn. 28, 229 N.W.2d 144 (1975).

17 Ill.—Gora v. 7-11 Food Stores, 109 Ill. App. 3d 109, 64 Ill. Dec. 727, 440 N.E.2d 279 (1st Dist. 1982).

N.Y.—Gabrielle v. Craft, 75 A.D.2d 939, 428 N.Y.S.2d 84 (3d Dep't 1980).

18 N.H.—Hughes v. Speaker of the New Hampshire House of Representatives, 152 N.H. 276, 876 A.2d 736 (2005).

19 U.S.—Administrator, Federal Aviation Administration v. Robertson, 422 U.S. 255, 95 S. Ct. 2140, 45 L. Ed. 2d 164 (1975).

Colo.—Ritter v. Jones, 207 P.3d 954 (Colo. App. 2009).

Fla.—Greater Orlando Aviation Authority v. Nejame, Lafay, Jancha, Vara, Barker, 4 So. 3d 41 (Fla. 5th DCA 2009).

Miss.—Mississippi State University v. People for Ethical Treatment of Animals, Inc., 992 So. 2d 595 (Miss. 2008).

Or.—Morrison v. School Dist. No. 48, Washington County, 53 Or. App. 148, 631 P.2d 784 (1981).

Wash.—West v. Thurston County, 168 Wash. App. 162, 275 P.3d 1200 (Div. 2 2012).

20 U.S.—Marshall v. Western Union Tel. Co., 621 F.2d 1246, 60 A.L.R. Fed. 235 (3d Cir. 1980).

21 Tex.—Thompson v. Texas State Bd. of Medical Examiners, 570 S.W.2d 123 (Tex. Civ. App. Tyler 1978), writ refused n.r.e., (Feb. 14, 1979).

Wash.—State v. Wilson, 11 Wash. App. 916, 528 P.2d 279 (Div. 2 1974).

Chiropractors

Iowa—State, ex rel. Iowa Dept. of Health v. Van Wyk, 320 N.W.2d 599 (Iowa 1982).

Firearms or weapons

Conn.—State v. DeCiccio, 315 Conn. 79, 105 A.3d 165 (2014).

22 U.S.—H. K. Porter Co. v. N. L. R. B., 397 U.S. 99, 90 S. Ct. 821, 25 L. Ed. 2d 146 (1970).

23 U.S.—Victory Carriers, Inc. v. Law, 404 U.S. 202, 92 S. Ct. 418, 30 L. Ed. 2d 383 (1971).

Conn.—Leonetti v. MacDermid, Inc., 310 Conn. 195, 76 A.3d 168 (2013).

Iowa—Staff Management v. Jimenez, 839 N.W.2d 640 (Iowa 2013), as corrected, (Nov. 18, 2013).

Mass.—Saab v. Massachusetts CVS Pharmacy, LLC, 452 Mass. 564, 896 N.E.2d 615 (2008).

N.C.—Rorie v. Holly Farms Poultry Co., 306 N.C. 706, 295 S.E.2d 458 (1982).

Tenn.—Mitchell v. Fayetteville Public Utilities, 368 S.W.3d 442 (Tenn. 2012).

Va.—Ashby v. Ramar Coal Co., Inc., 47 Va. App. 8, 622 S.E.2d 230 (2005).

Vt.—Gintof v. Husky Injection Molding, 177 Vt. 638, 2005 VT 8, 868 A.2d 713 (2005).

Employee misconduct

W. Va.—Geeslin v. Workmen's Compensation Com'r, 170 W. Va. 347, 294 S.E.2d 150 (1982).

24 U.S.—Kleppe v. New Mexico, 426 U.S. 529, 96 S. Ct. 2285, 49 L. Ed. 2d 34 (1976).

Cal.—Kono v. Meeker, 196 Cal. App. 4th 81, 126 Cal. Rptr. 3d 208 (3d Dist. 2011).

Mich.—Detroit Leasing Co. v. City of Detroit, 269 Mich. App. 233, 713 N.W.2d 269 (2005).

Rent control

Cal.—Santa Monica Beach, Ltd. v. Superior Court, 19 Cal. 4th 952, 81 Cal. Rptr. 2d 93, 968 P.2d 993 (1999).

25 U.S.—Labine v. Vincent, 401 U.S. 532, 91 S. Ct. 1017, 28 L. Ed. 2d 288 (1971).

26 U.S.—McCoy v. Schweiker, 683 F.2d 1138 (8th Cir. 1982).

Medicaid and Medicare

U.S.—Harris v. McRae, 448 U.S. 297, 100 S. Ct. 2671, 65 L. Ed. 2d 784 (1980).

Mass.—Moe v. Secretary of Administration and Finance, 382 Mass. 629, 417 N.E.2d 387 (1981).
N.Y.—Cheng San Chen v. Toia, 67 A.D.2d 1085, 415 N.Y.S.2d 169 (4th Dep't 1979), order aff'd, 50 N.Y.2d 826, 430 N.Y.S.2d 50, 407 N.E.2d 1346 (1980).

27 Minn.—Stawikowski v. Collins Elec. Const. Co., 289 N.W.2d 390 (Minn. 1979).
Or.—Naumes of Oregon, Inc. v. Employment Division, 23 Or. App. 57, 541 P.2d 141 (1975).

28 N.J.—Magro v. City of Vineland, 148 N.J. Super. 34, 371 A.2d 815 (App. Div. 1977).

Strict liability

Mich.—Zeni v. Anderson, 397 Mich. 117, 243 N.W.2d 270 (1976).

29 Md.—Schweitzer v. Brewer, 280 Md. 430, 374 A.2d 347 (1977).

Statutory violation as negligence per se

Pa.—Miller v. Hurst, 302 Pa. Super. 235, 448 A.2d 614 (1982).

30 Iowa—Fuller v. Buhrow, 292 N.W.2d 672 (Iowa 1980).
Mich.—Dahn v. Sheets, 104 Mich. App. 584, 305 N.W.2d 547 (1981).
Ohio—Baab v. Shockling, 61 Ohio St. 2d 55, 15 Ohio Op. 3d 82, 399 N.E.2d 87 (1980).

31 U.S.—Wahba v. H & N Prescription Center, Inc., 539 F. Supp. 352 (E.D. N.Y. 1982).

Strict liability

Del.—Cline v. Prowler Industries of Maryland, Inc., 418 A.2d 968, 29 U.C.C. Rep. Serv. 461, 15 A.L.R.4th 765 (Del. 1980).

32 N.Y.—Abrams v. Brooklyn Hospital, 91 Misc. 2d 380, 398 N.Y.S.2d 114 (Sup 1977).

33 Fla.—Davis v. Simpson, 313 So. 2d 796 (Fla. 1st DCA 1975).
Ohio—Keaton v. Ribbeck, 58 Ohio St. 2d 443, 12 Ohio Op. 3d 375, 391 N.E.2d 307 (1979).

Damages under Death on the High Seas Act

U.S.—Mobil Oil Corp. v. Higginbotham, 436 U.S. 618, 98 S. Ct. 2010, 56 L. Ed. 2d 581 (1978).

34 U.S.—Fuentes v. Shevin, 407 U.S. 67, 92 S. Ct. 1983, 32 L. Ed. 2d 556, 10 U.C.C. Rep. Serv. 913 (1972).
Wis.—Wick v. Mueller, 105 Wis. 2d 191, 313 N.W.2d 799 (1982).

Punitive damages

U.S.—In re Air Crash Disaster Near Chicago, Illinois on May 25, 1979, 644 F.2d 594 (7th Cir. 1981).

Jurisdictional requirements

Ga.—Gable v. State, 290 Ga. 81, 720 S.E.2d 170 (2011).

Pendent jurisdiction of federal court

U.S.—Lieb v. American Motors Corp., 538 F. Supp. 127 (S.D. N.Y. 1982).

35 Cal.—Rivera v. City of Carson, 117 Cal. App. 3d 718, 173 Cal. Rptr. 4 (2d Dist. 1981).
Ga.—Amu v. Barnes, 283 Ga. 549, 662 S.E.2d 113 (2008).
Idaho—Myers v. Qwest, 144 Idaho 280, 160 P.3d 437 (2007).
Mass.—Whitehouse v. Town of Sherborn, 11 Mass. App. Ct. 668, 419 N.E.2d 293 (1981).
Minn.—Thole v. Commissioner of Public Safety, 831 N.W.2d 17 (Minn. Ct. App. 2013).
Miss.—Joel v. Joel, 43 So. 3d 424 (Miss. 2010).
Mo.—Rolwing v. Nestle Holdings, Inc., 437 S.W.3d 180 (Mo. 2014), as modified, (Aug. 19, 2014).
N.J.—Ramirez v. Amsted Industries, Inc., 86 N.J. 332, 431 A.2d 811 (1981).
Vt.—Andrews v. Stam, 182 Vt. 482, 2007 VT 79, 939 A.2d 455 (2007).

36 Ariz.—Ticey v. Randolph, 5 Ariz. App. 136, 424 P.2d 178 (1967).
Mo.—State ex rel. Mercantile Nat. Bank at Dallas v. Rooney, 402 S.W.2d 354 (Mo. 1966).
Okla.—Griffin v. Teague, 2005 OK CIV APP 40, 115 P.3d 899 (Div. 2 2005).

37 Mo.—State ex rel. Bank of America N.A. v. Kanatzar, 413 S.W.3d 22 (Mo. Ct. App. W.D. 2013).

38 U.S.—U.S. v. Ragghianti, 560 F.2d 1376, 2 Fed. R. Evid. Serv. 725 (9th Cir. 1977).
Nev.—Zamora v. Price, 125 Nev. 388, 213 P.3d 490 (2009).

39 U.S.—Zoom Imaging, L.P. v. St. Luke's Hosp. and Health Network, 513 F. Supp. 2d 411 (E.D. Pa. 2007).
Cal.—St. Croix v. Superior Court, 228 Cal. App. 4th 434, 175 Cal. Rptr. 3d 202 (1st Dist. 2014), review denied, (Nov. 12, 2014).
Mass.—Board of Registration in Medicine v. Doe, 457 Mass. 738, 933 N.E.2d 67 (2010).

40 U.S.—Hurtado v. U.S., 410 U.S. 578, 93 S. Ct. 1157, 35 L. Ed. 2d 508 (1973).

41 Ind.—Wooten v. State, 418 N.E.2d 538 (Ind. Ct. App. 1981).

42 U.S.—Chemehuevi Tribe of Indians v. Federal Power Commission, 420 U.S. 395, 95 S. Ct. 1066, 43 L. Ed. 2d 279 (1975).

43 Mich.—Peters v. State, 400 Mich. 50, 252 N.W.2d 799 (1977).

44 U.S.—Mathews v. De Castro, 429 U.S. 181, 97 S. Ct. 431, 50 L. Ed. 2d 389 (1976).

As to nonjusticiable political questions concerning the public, see § 396.

45 U.S.—U. S. v. Mitchell, 403 U.S. 190, 91 S. Ct. 1763, 29 L. Ed. 2d 406 (1971).

46 U.S.—Commonwealth Edison Co. v. Montana, 453 U.S. 609, 101 S. Ct. 2946, 69 L. Ed. 2d 884 (1981).

As to nonjusticiable political questions concerning taxation and assessments, generally, see § 408.

47 U.S.—Clark v. Board of Ed. of Shelbyville, Ky., 350 F. Supp. 149 (E.D. Ky. 1972).

Recognition of cause of action to challenge racial gerrymandering

Recognition of a cause of action to challenge racial gerrymandering in drawing congressional districts does not threaten excessive judicial entanglement into a state's districting process despite the complexity of the districting process that prevents adoption of bright-line rules; the courts will remain in their customary and appropriate backstop role.

U.S.—Bush v. Vera, 517 U.S. 952, 116 S. Ct. 1941, 135 L. Ed. 2d 248 (1996).

As to nonjusticiable political questions concerning territorial divisions, see § 401.

As to nonjusticiable political questions concerning reapportionment of legislative bodies, see § 406.

48 U.S.—Nunnery v. Barber, 503 F.2d 1349, 23 Fed. R. Serv. 2d 232 (4th Cir. 1974).

As to nonjusticiable political questions concerning public offices and officers, see § 395.

49 U.S.—Brown v. Town of Cary, 706 F.3d 294 (4th Cir. 2013).

Cal.—Camp v. Board of Supervisors, 123 Cal. App. 3d 334, 176 Cal. Rptr. 620 (1st Dist. 1981).

Ind.—Strange v. Board of Zoning Appeals of Shelby County, 428 N.E.2d 1328 (Ind. Ct. App. 1981).

N.H.—Taylor v. Town of Plaistow, 152 N.H. 142, 872 A.2d 769 (2005).

End of Document

16 C.J.S. Constitutional Law § 420

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

3. Encroachment on, or Interference with, Legislature

b. Legislative Matters

§ 420. Determination of existence of emergency

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2481

Although the matter is subject to judicial review, initially and primarily it is for the legislature to determine whether an emergency exists warranting or requiring the enactment of a statute.

Initially and primarily, it is for the legislature to determine whether an emergency exists authorizing or requiring the enactment of a statute.[1] The legislative determination of the existence of an emergency is entitled to great weight,[2] but such a determination is not conclusive and is subject to judicial review.[3] Nonetheless, the legislature's determination will not be disturbed unless it is clearly and unmistakably erroneous.[4]

Under constitutional provisions as to the immediate effectiveness of emergency laws, the legislative decision concerning the existence of such an emergency may be deemed conclusive[5] except where the constitution provides that facts constituting an emergency are to be stated and the facts, as stated, manifestly do not show such an emergency.[6] According to other authorities, while the question is in the first instance for the legislature,[7] the courts may review it.[8]

Whether an exigency still exists on which the continued operation of a law depends is a matter open to judicial inquiry.[9] However, where the legislature has determined the time limit for which an emergency statute may be operative, the courts cannot extend that period.[10]

Footnotes

1 N.Y.—East New York Sav. Bank v. Hahn, 293 N.Y. 622, 59 N.E.2d 625 (1944), judgment aff'd, 326 U.S. 230, 66 S. Ct. 69, 90 L. Ed. 34, 160 A.L.R. 1279 (1945).
Tex.—Quinn v. Johnson, 91 S.W.2d 499 (Tex. Civ. App. Beaumont 1936), writ dismissed.
As to the determination of facts on which the validity of a statute depends, see § 421.
Statement of emergency
Va.—Board of Sup'rs of Elizabeth City County v. State Milk Commission, 191 Va. 1, 60 S.E.2d 35 (1950).
Determination of questions of fact
Questions of fact are within the exclusive prerogative of the legislature, for its determination under a constitutional section dealing with emergency legislation.
Me.—Beale v. Secretary of State, 1997 ME 82, 693 A.2d 336 (Me. 1997).

2 N.Y.—East New York Sav. Bank v. Hahn, 293 N.Y. 622, 59 N.E.2d 625 (1944), judgment aff'd, 326 U.S. 230, 66 S. Ct. 69, 90 L. Ed. 34, 160 A.L.R. 1279 (1945).
Wash.—State ex rel. McLeod v. Reeves, 22 Wash. 2d 672, 157 P.2d 718 (1945).

3 Ky.—American Ins. Ass'n v. Geary, 635 S.W.2d 306 (Ky. 1982).
N.J.—Hutton Park Gardens v. Town Council of Town of West Orange, 68 N.J. 543, 350 A.2d 1 (1975).

4 Ky.—American Ins. Ass'n v. Geary, 635 S.W.2d 306 (Ky. 1982).
Ohio—City of Cleveland Heights v. Simon, 27 Ohio Op. 311, 13 Ohio Supp. 1, 1943 WL 3231 (Police Ct. 1943).

5 Colo.—Cavanaugh v. State, Dept. of Social Services, 644 P.2d 1 (Colo. 1982).
Md.—Biggs v. Maryland-National Capital Park and Planning Commission, 269 Md. 352, 306 A.2d 220 (1973).
Okla.—In re Supreme Court Referendum Petition in Ponca City, Concerning Ordinance No. 4478, 1974 OK 101, 530 P.2d 120 (Okla. 1974).
Tex.—Artcarved Class Rings, Inc. v. City of Austin, 551 S.W.2d 788 (Tex. Civ. App. Eastland 1977), writ refused, (Oct. 19, 1977).

6 Ark.—Gentry v. Harrison, 194 Ark. 916, 110 S.W.2d 497 (1937).
Cal.—Davis v. Los Angeles County, 12 Cal. 2d 412, 84 P.2d 1034 (1938).

7 Me.—Morris v. Goss, 147 Me. 89, 83 A.2d 556 (1951).
Mich.—Krench v. State, 277 Mich. 168, 269 N.W. 131 (1936).

8 Me.—Morris v. Goss, 147 Me. 89, 83 A.2d 556 (1951).
Mich.—People v. Stambosva, 210 Mich. 436, 178 N.W. 226 (1920).
S.D.—Culhane v. Mutual Ben. Life Ins. Co. of Newark, N. J., 65 S.D. 344, 274 N.W. 319 (1937).

9 U.S.—Home Bldg. & Loan Ass'n v. Blaisdell, 290 U.S. 398, 54 S. Ct. 231, 78 L. Ed. 413, 88 A.L.R. 1481 (1934).
Fla.—Hillsborough County v. Bregenzer, 151 Fla. 747, 10 So. 2d 498 (1942).

10 N.J.—Smith v. National Commercial Title & Mortg. Guaranty Co., 120 N.J.L. 75, 198 A. 407 (N.J. Ct. Err. & App. 1938).

16 C.J.S. Constitutional Law § 421

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

3. Encroachment on, or Interference with, Legislature

b. Legislative Matters

§ 421. Determination of facts on which validity of statute depends

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2479 to 2482

The determination of the facts on which the validity of a statute depends is primarily for the legislature, although such a determination is subject to judicial review.

The determination of the underlying facts on which the validity of a statute depends is primarily a question for the legislature.[1] The legislature's determination is entitled to great weight[2] and will generally be acquiesced in by the courts[3] if the question is fairly debatable[4] and if the legislative determination is not manifestly arbitrary or unreasonable.[5]

As a general rule, a legislative determination of the facts on which the validity of a statute depends is subject to judicial review.[6] However, it is not the judiciary's function to reweigh the findings of "legislative facts" underlying a legislative enactment.[7] Rather, the fact finding process of legislative bodies is generally entitled to a presumption of regularity and deferential review by the judiciary.[8] When the Congress of the United States makes findings on essentially factual issues those findings are entitled

to a great deal of deference by the judiciary, inasmuch as Congress is an institution better equipped to amass and evaluate the vast amounts of data bearing on such an issue.[9]

In reviewing the constitutionality of a statute, the courts must accord substantial deference to predictive judgments of Congress,[10] and the courts are not empowered to adjudicate the accuracy of legislative findings.[11] Thus, in reviewing the constitutionality of a statute, a court does not pass judgment on the wisdom or necessity of the legislation or on whether the statute is based upon assumptions which are scientifically substantiated.[12] If the evidence offered in support of the facts in issue would lead objective and reasonable persons to reach different conclusions, the legislative determination may be considered fairly debatable, in which event such a determination must be upheld by the courts.[13] However, the deference afforded to legislative findings does not foreclose a court's independent judgment of facts bearing on an issue of constitutional law, and the court has an obligation to assure that, in formulating its judgments, the legislature has drawn reasonable inferences based on substantial evidence.[14] When the constitutionality of a statute depends on facts, the determination of those facts by the legislature can be set aside if it is clearly erroneous, arbitrary, or wholly unwarranted.[15] Moreover, legislative findings purporting to contradict or abrogate express judicial findings of fact evidencing a violation of a constitutional mandate may be subject to independent review by the courts to determine whether they reasonably support a contrary determination.[16]

For purposes of review by the United States Supreme Court of the constitutionality of a statute, the substantiality of the evidence upon which Congress has drawn inferences is to be measured by a standard more deferential than the Supreme Court accords to judgments of an administrative agency, and such deference is owed even in the realm of First Amendment questions where Congress must base its conclusions upon substantial evidence.[17] Where the existence of a rational basis for legislation, the constitutionality of which is suitably challenged, depends on facts beyond the sphere of judicial notice, such facts may properly be made the subject of judicial inquiry,[18] but where the legislative judgment is drawn in question, such an inquiry must be restricted to the issue of whether any state of facts, either known or which could reasonably be assumed, affords support for it.[19] Even in the realm of First Amendment questions where Congress must base its conclusions upon substantial evidence, deference must be accorded to its findings as to the harm to be avoided and to the remedial measures adopted for that end, lest a court infringe on traditional legislative authority to make predictive judgments when enacting nationwide regulatory policy.[20]

Footnotes

1 U.S.—Kealey Pharmacy & Home Care Service, Inc. v. Walgreen Co., 539 F. Supp. 1357 (W.D. Wis. 1982), judgment aff'd, 761 F.2d 345 (7th Cir. 1985).
Mich.—Doe v. Oettle, 97 Mich. App. 183, 293 N.W.2d 760 (1980).
Minn.—City of Richfield v. Local No. 1215, Intern. Ass'n of Fire Fighters, 276 N.W.2d 42 (Minn. 1979).

2 Fla.—City of New Smyrna Beach v. Fish, 384 So. 2d 1272 (Fla. 1980).
Wis.—Konkel v. Town of Raymond, 101 Wis. 2d 704, 305 N.W.2d 190 (Ct. App. 1981).

3 La.—McIntosh v. City of New Orleans, Dept. of Regulatory Inspection, 188 So. 2d 183 (La. Ct. App. 4th Cir. 1966).
Wash.—City of Tacoma v. O'Brien, 85 Wash. 2d 266, 534 P.2d 114 (1975).
As to the general prohibition against interference by the courts with legislative policy decisions, see § 426.

4 D.C.—U. S. v. Thorne, 325 A.2d 764 (D.C. 1974).
Mich.—Cady v. City of Detroit, 289 Mich. 499, 286 N.W. 805 (1939).

5 Fla.—City of New Smyrna Beach v. Fish, 384 So. 2d 1272 (Fla. 1980).
S.D.—Gravning v. Zellmer, 291 N.W.2d 751 (S.D. 1980).
W. Va.—State ex rel. Ohio County Commission v. Samol, 165 W. Va. 714, 275 S.E.2d 2 (1980).

6 U.S.—Milnot Co. v. Richardson, 350 F. Supp. 221 (N.D. Ill. 1972).
Cal.—Paul v. Eggman, 244 Cal. App. 2d 461, 53 Cal. Rptr. 237 (5th Dist. 1966).

Wis.—Konkel v. Town of Raymond, 101 Wis. 2d 704, 305 N.W.2d 190 (Ct. App. 1981).

Scope of inquiry

Courts will not independently review the factual basis on which a legislature justified a statute, nor will a court independently review the wisdom of a statute; instead, courts inquire whether the legislature reasonably could conceive to be true the facts on which the challenged statute was based.

Neb.—Connelly v. City of Omaha, 284 Neb. 131, 816 N.W.2d 742 (2012).

7 Cal.—Hotel Employees and Restaurant Employees Intern. Union v. Davis, 21 Cal. 4th 585, 88 Cal. Rptr. 2d 56, 981 P.2d 990 (1999).

8 U.S.—City of Richmond v. J.A. Croson Co., 488 U.S. 469, 109 S. Ct. 706, 102 L. Ed. 2d 854 (1989).

Great deference

Ill.—Best v. Taylor Mach. Works, 179 Ill. 2d 367, 228 Ill. Dec. 636, 689 N.E.2d 1057 (1997).

W. Va.—State ex rel. Cities of Charleston, Huntington and its Counties of Ohio and Kanawha v. West Virginia Economic Development Authority, 214 W. Va. 277, 588 S.E.2d 655 (2003).

Congressional judgments concerning regulatory schemes

U.S.—Turner Broadcasting System, Inc. v. F.C.C., 520 U.S. 180, 117 S. Ct. 1174, 137 L. Ed. 2d 369 (1997).

9 U.S.—Walters v. National Ass'n of Radiation Survivors, 473 U.S. 305, 105 S. Ct. 3180, 87 L. Ed. 2d 220 (1985).

Additional measure of deference owed out of respect for Congress's authority to exercise legislative power

U.S.—Turner Broadcasting System, Inc. v. F.C.C., 520 U.S. 180, 117 S. Ct. 1174, 137 L. Ed. 2d 369 (1997).

10 U.S.—Turner Broadcasting System, Inc. v. F.C.C., 520 U.S. 180, 117 S. Ct. 1174, 137 L. Ed. 2d 369 (1997).

11 Ill.—Best v. Taylor Mach. Works, 179 Ill. 2d 367, 228 Ill. Dec. 636, 689 N.E.2d 1057 (1997).

12 Neb.—State v. Garber, 249 Neb. 648, 545 N.W.2d 75 (1996).

13 Va.—Wilkins v. West, 264 Va. 447, 571 S.E.2d 100 (2002).

14 Cal.—Professional Engineers v. Department of Transportation, 15 Cal. 4th 543, 63 Cal. Rptr. 2d 467, 936 P.2d 473 (1997).

15 Va.—Wilkins v. West, 264 Va. 447, 571 S.E.2d 100 (2002).

16 Cal.—Professional Engineers v. Department of Transportation, 15 Cal. 4th 543, 63 Cal. Rptr. 2d 467, 936 P.2d 473 (1997).

17 U.S.—Turner Broadcasting System, Inc. v. F.C.C., 520 U.S. 180, 117 S. Ct. 1174, 137 L. Ed. 2d 369 (1997).

18 U.S.—U.S. v. Carolene Products Co., 304 U.S. 144, 58 S. Ct. 778, 82 L. Ed. 1234 (1938).

19 U.S.—Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 101 S. Ct. 715, 66 L. Ed. 2d 659 (1981).

20 U.S.—Discount Tobacco City & Lottery, Inc. v. U.S., 674 F.3d 509 (6th Cir. 2012), cert. denied, 133 S. Ct. 1996, 185 L. Ed. 2d 865 (2013).

End of Document

16 C.J.S. Constitutional Law § 422

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

3. Encroachment on, or Interference with, Legislature

b. Legislative Matters

§ 422. Determination of mode and propriety of classification

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2483

It is a legislative and not a judicial function to classify the objects of legislation, and a legislative classification is not subject to judicial interference unless manifestly unreasonable or arbitrary.

In recognition of fundamental principles relating to the separation of powers among the branches of government, the courts recognize the power of the legislature to make reasonable classifications for legislative purposes.[1] It is a legislative and not a judicial function to classify the objects of legislation and a legislative classification is not subject to judicial interference unless manifestly unreasonable or arbitrary,[2] or in contravention of constitutional inhibitions.[3] In the context of an equal protection challenge, the courts normally will not interfere unless classification is clearly arbitrary and unreasonable.[4] If there is any reasonable basis for a legislative classification, the courts will not interfere.[5]

The rule that classification is a matter for the legislature has been applied to legislative classifications of various particular matters,[6] such as governmental subdivisions,[7] subjects of taxation,[8] zoning,[9] and criminal offenses.[10]

Footnotes

1 W. Va.—Gallant v. County Com'n of Jefferson County, 212 W. Va. 612, 575 S.E.2d 222 (2002).
As to the separation-of-powers doctrine, generally, see § 272.
As to the effect of the separation-of-powers doctrine in determining the nature and scope of the powers of governmental departments, see § 384.
Defining class of persons subject to regulatory requirement
Defining the class of persons subject to a regulatory requirement inevitably requires that some persons who have an almost equally strong claim to favored treatment be placed on different sides of the line, and the fact that the line might have been drawn differently at some points is a matter for legislative, rather than judicial, consideration.
U.S.—F.C.C. v. Beach Communications, Inc., 508 U.S. 307, 113 S. Ct. 2096, 124 L. Ed. 2d 211 (1993).

2 U.S.—Schweiker v. Wilson, 450 U.S. 221, 101 S. Ct. 1074, 67 L. Ed. 2d 186 (1981).
Cal.—Calderone v. Post, 134 Cal. App. 3d 1008, 185 Cal. Rptr. 52 (2d Dist. 1982).
Mass.—Shell Oil Co. v. City of Revere, 383 Mass. 682, 421 N.E.2d 1181 (1981).
Neb.—State v. Edmunds, 211 Neb. 380, 318 N.W.2d 859 (1982).
N.J.—Paul Kimball Hospital, Inc. v. Brick Tp. Hospital, Inc., 86 N.J. 429, 432 A.2d 36 (1981).

3 Neb.—State ex rel. Douglas v. Nebraska Mortgage Finance Fund, 204 Neb. 445, 283 N.W.2d 12 (1979).

4 Ala.—Northington v. Alabama Dept. of Conservation and Natural Resources, 33 So. 3d 560 (Ala. 2009).
Conn.—State v. Courchesne, 296 Conn. 622, 998 A.2d 1 (2010).
Ind.—Studler v. Indiana Bureau of Motor Vehicles, 896 N.E.2d 1156 (Ind. Ct. App. 2008).
Mo.—City of Sullivan v. Sites, 329 S.W.3d 691 (Mo. 2010).
S.D.—State v. Geise, 2002 SD 161, 656 N.W.2d 30 (S.D. 2002).
Equal protection analysis; rational basis test
A statute is rationally related to an objective, for purposes of an equal protection analysis under a rational basis test, if the statute produces effects that advance, rather than retard or have no bearing on, the attainment of the objective, and so long as the regulation is positively related to a conceivable legitimate purpose, it passes scrutiny; it is for the legislature, not the courts, to balance the advantages and disadvantages.
Kan.—State ex rel. Tomasic v. Unified Government of Wyandotte County/Kansas City, Kan., 265 Kan. 779, 962 P.2d 543 (1998).

5 Ind.—Chaffin v. Nicosia, 261 Ind. 698, 310 N.E.2d 867 (1974).
Or.—City of Klamath Falls v. Winters, 289 Or. 757, 619 P.2d 217 (1980).
Wis.—State v. Duffy, 54 Wis. 2d 61, 194 N.W.2d 624 (1972).

6 N.Y.—Bergerman v. Byrnes, 114 N.Y.S.2d 416 (Sup 1952), judgment aff'd, 280 A.D. 884, 115 N.Y.S.2d 523 (1st Dep't 1952), order aff'd, 305 N.Y. 811, 113 N.E.2d 557 (1953).
Md.—Bosley v. Quigley, 189 Md. 493, 56 A.2d 835 (1948).
Unemployment compensation
Colo.—Miller v. Industrial Com'n, 173 Colo. 476, 480 P.2d 565 (1971).

7 Fla.—Lightfoot v. State, 64 So. 2d 261 (Fla. 1952).

8 Md.—Foley v. Comptroller of Treasury, 259 Md. 330, 269 A.2d 807 (1970).
Miss.—Harris v. Harrison County Bd. of Supervisors, 366 So. 2d 651 (Miss. 1979).
Mo.—State ex rel. Atkinson v. Planned Indus. Expansion Authority of St. Louis, 517 S.W.2d 36, 98 A.L.R.3d 663 (Mo. 1975).

9 Ill.—Chicago Title & Trust Co. v. City of Chicago, 130 Ill. App. 2d 45, 264 N.E.2d 730 (1st Dist. 1970).

10 U.S.—U.S. v. Stieren, 608 F.2d 1135 (8th Cir. 1979); U.S. v. LaFroscia, 354 F. Supp. 1338 (S.D. N.Y. 1973).
Ark.—Wilson v. State, 271 Ark. 682, 611 S.W.2d 739 (1981).
Ill.—People v. Estes, 37 Ill. App. 3d 889, 346 N.E.2d 469 (4th Dist. 1976).
Wis.—State ex rel. Huser v. Rasmussen, 85 Wis. 2d 441, 270 N.W.2d 62 (1978).

End of Document

16 C.J.S. Constitutional Law § 423

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

3. Encroachment on, or Interference with, Legislature

b. Legislative Matters

§ 423. Determination of public use and purpose

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2473, 2482, 2510

What is a public purpose or a public use is a matter primarily for the legislature, whose determination will not be disturbed unless palpably unreasonable.

It is primarily for the legislature to determine whether it is exercising its powers for a public purpose,[1] and legislative determinations of the existence of a public purpose are entitled to great weight.[2] The courts normally will not interfere with the legislature's determination unless it is arbitrary and unreasonable, or clearly wrong, or the organic law is violated.[3] However, although the courts afford very wide discretion to legislative declarations of public purpose,[4] they are not bound by such legislative expressions.[5]

Likewise, it is for the legislature to determine, in the first instance, what uses are public,[6] and its judgment will be respected by the courts unless palpably unreasonable[7] although ultimately it may be a matter for the courts to decide.[8] The courts may

not go beyond the expressed purpose of a legislative act and say that it was not enacted for that purpose as long as the means provided are not unrelated to the express objects of the legislation.[9]

Footnotes

1 Mass.—Opinion of the Justices to Senate, 383 Mass. 895, 424 N.E.2d 1092 (1981).
Mich.—Stottlemeyer v. General Motors Corp., 399 Mich. 605, 250 N.W.2d 486 (1977).
Mo.—State ex rel. Wagner v. St. Louis County Port Authority, 604 S.W.2d 592 (Mo. 1980).
What constitutes public purpose
For a use to be "public," its benefits must be in common and not for particular persons, interests, or estates, and the ultimate net gain or advantage must be the public's, as distinguished from that of an individual or private entity.
N.C.—Maready v. City of Winston-Salem, 342 N.C. 708, 467 S.E.2d 615 (1996).

2 Cal.—Consumers Union of U. Inc. v. California Milk Producers Advisory Bd., 82 Cal. App. 3d 433, 147 Cal. Rptr. 265 (1st Dist. 1978).
N.C.—Maready v. City of Winston-Salem, 342 N.C. 708, 467 S.E.2d 615 (1996).
Wis.—Town of Beloit v. County of Rock, 2003 WI 8, 259 Wis. 2d 37, 657 N.W.2d 344 (2003).

3 Fla.—State v. Orange County Indus. Development Authority, 417 So. 2d 959 (Fla. 1982).
Mo.—State ex rel. Wagner v. St. Louis County Port Authority, 604 S.W.2d 592 (Mo. 1980).
W. Va.—State ex rel. City of Charleston v. Bosely, 165 W. Va. 332, 268 S.E.2d 590 (1980).
Scope and standard of judicial review
(1) A legislative determination of what is a public purpose will not be interfered with by the courts unless the judicial mind conceives it to be without a reasonable relation to the public interest.
W. Va.—State ex rel. West Virginia Citizens Action Group v. West Virginia Economic Development Grant Committee, 213 W. Va. 255, 580 S.E.2d 869 (2003).
(2) In performing the constitutional burden of examining legislative actions for the existence of a public purpose, the court's duties are limited to determining whether the legislation contravenes provisions of the state constitution.
Wis.—Town of Beloit v. County of Rock, 2003 WI 8, 259 Wis. 2d 37, 657 N.W.2d 344 (2003).

4 Wis.—Town of Beloit v. County of Rock, 2003 WI 8, 259 Wis. 2d 37, 657 N.W.2d 344 (2003).

5 Cal.—Consumers Union of U. Inc. v. California Milk Producers Advisory Bd., 82 Cal. App. 3d 433, 147 Cal. Rptr. 265 (1st Dist. 1978).
Haw.—State ex rel. Amemiya v. Anderson, 56 Haw. 566, 545 P.2d 1175 (1976).
Wis.—Town of Beloit v. County of Rock, 2003 WI 8, 259 Wis. 2d 37, 657 N.W.2d 344 (2003).

6 U.S.—U.S. v. 43,355 Square Feet of Land in King County, Wash., 51 F. Supp. 905 (W.D. Wash. 1943).
N.D.—In re Garrison Diversion Conservancy Dist., 144 N.W.2d 82 (N.D. 1966).

7 Cal.—Alameda County v. Janssen, 16 Cal. 2d 276, 106 P.2d 11, 130 A.L.R. 1141 (1940).
N.D.—In re Garrison Diversion Conservancy Dist., 144 N.W.2d 82 (N.D. 1966).

8 Cal.—Black Rock Placer Mining Dist. v. Summit Water & Irrigation Co., 56 Cal. App. 2d 513, 133 P.2d 58 (3d Dist. 1943).
N.D.—Ferch v. Housing Authority of Cass County, 79 N.D. 764, 59 N.W.2d 849 (1953).
Va.—Mumpower v. Housing Authority of City of Bristol, 176 Va. 426, 11 S.E.2d 732 (1940).

9 U.S.—State of Arizona v. State of California, 283 U.S. 423, 51 S. Ct. 522, 75 L. Ed. 1154 (1931).

16 C.J.S. Constitutional Law § 424

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

3. Encroachment on, or Interference with, Legislature

b. Legislative Matters

§ 424. Definition and punishment of crime

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2507

Subject to constitutional limitations, the courts generally must enforce criminal statutes as they are written and may not encroach on the exclusive power of the legislature to define crimes or prescribe the punishment therefor.

Courts generally must enforce criminal statutes as they are written[1] and cannot change them by judicial construction or by any other means.[2] The courts cannot by construction extend the scope of a criminal statute,[3] nor may the courts restrict its application or create exceptions or limitations.[4] Nonetheless, a court does not encroach on the legislative power in interpreting, construing, and giving meaning to a criminal statute.[5]

Subject to constitutional limitations, the courts may not encroach on the exclusive power of the legislature to define crimes.[6] Decisions about what facts are material and what are immaterial, or what facts are necessary to constitute a crime, and therefore must be proved individually, and what facts are mere means, represent value choices more appropriately made in the first instance

by the legislature than by a court.[7] Within limits, the question of whether a factor is an element of a charged crime, which must be set forth in the indictment, or simply relevant to the sentence imposed is normally a matter for Congress to decide.[8]

It also is for the legislature, and not the courts, to prescribe the punishment for crimes.[9] Thus, judgments about the appropriate punishment for an offense belong, in the first instance, to the legislature.[10] The discretion to delimit categories of crimes justifying detention, like the discretion to define criminal offenses and prescribe punishments, resides wholly with the Legislative Branch.[11]

Regulation of criminal procedure.

The courts may not encroach on the legislature's power to regulate criminal procedure.[12] However, in some instances, a court may make rules of criminal procedure without usurping the legislative function.[13]

CUMULATIVE SUPPLEMENT

Cases:

Under due process principles and constitutional separation of powers, the imposition of criminal punishment cannot be made to depend on a judge's estimation of the degree of risk posed by a crime's imagined ordinary case. U.S. Const. Amend. 5. United States v. Davis, 139 S. Ct. 2319 (2019).

While constitutional separation of powers prohibits a court from imposing criminal punishment beyond what Congress meant to enact, a court likewise is prohibited from imposing criminal punishment beyond what Congress in fact has enacted by a valid law; in either case a court lacks the power to exact a penalty that has not been authorized by any valid criminal statute. Welch v. U.S., 136 S. Ct. 1257 (2016).

As a general rule, defining federal crimes and establishing appropriate penalties are matters within Congress's exclusive domain, and courts owe substantial deference to such legislative judgments, and they cannot sit as superlegislatures to second-guess congressional wisdom. United States v. Kilmartin, 944 F.3d 315 (1st Cir. 2019).

[END OF SUPPLEMENT]

Footnotes

1 Ala.—Persons v. State, 339 So. 2d 1092 (Ala. Crim. App. 1976).
Utah—Belt v. Turner, 25 Utah 2d 380, 483 P.2d 425 (1971).
Under federal system
Under the federal system, it is only Congress, and not the courts, which can make conduct criminal.
U.S.—Bousley v. U.S., 523 U.S. 614, 118 S. Ct. 1604, 140 L. Ed. 2d 828 (1998).

2 U.S.—Red Bluff Drive-In, Inc. v. Vance, 648 F.2d 1020 (5th Cir. 1981).
Ind.—Carter v. State, 422 N.E.2d 742 (Ind. Ct. App. 1981).
Mich.—People v. Guthrie, 97 Mich. App. 226, 293 N.W.2d 775 (1980).
Okla.—Jones v. State, 1982 OK CR 112, 648 P.2d 1251 (Okla. Crim. App. 1982).
Tex.—Minor v. State, 624 S.W.2d 702 (Tex. App. El Paso 1981), petition for discretionary review refused, (Mar. 10, 1982).

As to the role of the courts in the construction and interpretation of statutes, generally, see § 414.

Intent

When the general assembly prescribes a specific intent necessary to commit a crime, the courts cannot substitute a different intent.

Colo.—People v. Cisneros, 193 Colo. 380, 566 P.2d 703 (1977).

3 U.S.—Morissette v. U.S., 342 U.S. 246, 72 S. Ct. 240, 96 L. Ed. 288 (1952); U.S. v. Dishman, 486 F.2d 727 (9th Cir. 1973).

Ind.—Grooms v. Fervida, 182 Ind. App. 664, 396 N.E.2d 405 (1979).

La.—State v. Brown, 378 So. 2d 916 (La. 1979).

4 U.S.—U. S. v. Jones, 542 F.2d 661 (6th Cir. 1976); U.S. v. Walker, 514 F. Supp. 294, 60 A.L.R. Fed. 734 (E.D. La. 1981).

N.M.—State v. Wilson, 97 N.M. 534, 1982-NMCA-019, 641 P.2d 1081 (Ct. App. 1982).

N.Y.—People v. Skinner, 57 A.D.2d 785, 394 N.Y.S.2d 675 (1st Dep't 1977).

Felony-murder rule

Cal.—In re Jessie L., 131 Cal. App. 3d 202, 182 Cal. Rptr. 396 (2d Dist. 1982).

N.C.—State v. Wall, 304 N.C. 609, 286 S.E.2d 68 (1982).

5 U.S.—Jordan v. Watkins, 681 F.2d 1067 (5th Cir. 1982).

Colo.—Olinyk v. People, 642 P.2d 490 (Colo. 1982).

Okla.—Stockton v. State, 1975 OK CR 103, 536 P.2d 982 (Okla. Crim. App. 1975).

Wis.—Balistreri v. State, 83 Wis. 2d 440, 265 N.W.2d 290 (1978).

Consecutive sentences

U.S.—Fierro v. MacDougall, 648 F.2d 1259 (9th Cir. 1981).

Presentation of mitigating circumstances

Ariz.—State v. Greenawalt, 128 Ariz. 150, 624 P.2d 828 (1981).

6 Cal.—Cline v. Superior Court, 135 Cal. App. 3d 943, 185 Cal. Rptr. 787 (1st Dist. 1982).

Colo.—People ex rel. City of Arvada v. Nissen, 650 P.2d 547 (Colo. 1982).

La.—State v. Smith, 414 So. 2d 1237 (La. 1982).

Wis.—State v. Princess Cinema of Milwaukee, Inc., 96 Wis. 2d 646, 292 N.W.2d 807 (1980).

Federal crimes

(1) Federal crimes are defined by Congress, not courts.

U.S.—U.S. v. Lanier, 520 U.S. 259, 117 S. Ct. 1219, 137 L. Ed. 2d 432 (1997).

(2) The federal courts interpret, rather than author, the federal criminal code, and are not at liberty to rewrite it.

U.S.—U.S. v. Oakland Cannabis Buyers' Co-op., 532 U.S. 483, 121 S. Ct. 1711, 149 L. Ed. 2d 722 (2001).

Crimes justifying detention

Discretion to delimit categories of crimes justifying detention, like discretion to define criminal offenses and prescribe punishments, resides wholly with state legislature.

U.S.—Schall v. Martin, 467 U.S. 253, 104 S. Ct. 2403, 81 L. Ed. 2d 207 (1984).

7 U.S.—Schad v. Arizona, 501 U.S. 624, 111 S. Ct. 2491, 115 L. Ed. 2d 555 (1991).

Tex.—Jacobsen v. State, 325 S.W.3d 733 (Tex. App. Austin 2010).

8 U.S.—Almendarez-Torres v. U.S., 523 U.S. 224, 118 S. Ct. 1219, 140 L. Ed. 2d 350 (1998).

9 U.S.—Arroyo v. U.S., 359 U.S. 419, 79 S. Ct. 864, 3 L. Ed. 2d 915 (1959); U.S. v. Nigg, 667 F.3d 929 (7th Cir. 2012).

Ala.—Smith v. State, 335 So. 2d 393 (Ala. Crim. App. 1976).

Ohio—State v. Hairston, 118 Ohio St. 3d 289, 2008-Ohio-2338, 888 N.E.2d 1073 (2008).

Tenn.—State v. Austin, 618 S.W.2d 738 (Tenn. 1981).

Sentencing

Wis.—State v. Dowdy, 2012 WI 12, 338 Wis. 2d 565, 808 N.W.2d 691 (2012).

10 U.S.—U.S. v. Bajakajian, 524 U.S. 321, 118 S. Ct. 2028, 141 L. Ed. 2d 314, 172 A.L.R. Fed. 705 (1998).

As to the inherent power of the courts, see § 387.

11 U.S.—Schall v. Martin, 467 U.S. 253, 104 S. Ct. 2403, 81 L. Ed. 2d 207 (1984).

12 Cal.—Simmons v. Municipal Court, 109 Cal. App. 3d 15, 167 Cal. Rptr. 608 (1st Dist. 1980).

Fla.—State v. Rush, 399 So. 2d 527 (Fla. 2d DCA 1981).

Wash.—State v. Davidson, 26 Wash. App. 623, 613 P.2d 564 (Div. 1 1980).

13 N.J.—State v. Leonardis, 73 N.J. 360, 375 A.2d 607 (1977).

End of Document

16 C.J.S. Constitutional Law § 425

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

3. Encroachment on, or Interference with, Legislature

b. Legislative Matters

§ 425. Membership, organization, and procedure of legislative bodies

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2531 to 2533

The courts generally cannot control, review, or inquire into the membership, organization, and procedure of legislative bodies.

As a general rule, each legislative body is the sole judge of the elections, returns, and qualifications of its own members.[1] Thus, the legislature's action in admitting or expelling a member ordinarily is not reviewable in the courts.[2] However, the courts may determine whether a specified official should administer an oath of office to a person as a member-elect of the legislature as prescribed by a constitutional provision.[3]

Likewise, it is entirely the prerogative of a legislature to make, interpret, and enforce its own procedural rules, and the judiciary cannot compel the legislature to act in accordance with its own procedural rules so long as constitutional questions are not implicated.[4] Internal procedural aspects of the legislative process, as well as proceedings of the legislature,[5] such as those having to do with the election of an officer,[6] and rules of procedure[7] are not subject to judicial control or revision, at least in the

absence of a constitutional mandate to do so, or unless the procedure or result constitutes a deprivation of constitutional rights.[8] Courts do not review claims that actions were taken in violation of a legislative rule.[9] Moreover, the legislature's disregard of a rule of procedure is not a subject for judicial inquiry.[10]

A state legislature is authorized to establish rules governing its own proceedings, and so long as those rules do not violate some other provision of the constitution, it ordinarily is not within a court's prerogative to approve, disapprove, or enforce them.[11] Because the legislature is limited only by constitutional provisions, courts cannot look to the wisdom or folly, or to the advantages or disadvantages, of the rules which a legislative body adopts to govern its own proceedings.[12] Thus, the courts generally consider that the legislature's adherence to the rules or statutes prescribing procedure is a matter entirely within legislative control and discretion, not subject to judicial review, unless the legislative procedure is mandated by the constitution.[13]

On the other hand, it is within the power of the judiciary to review the rules of a legislative body for constitutionality and to ensure they do not violate individual fundamental rights.[14] Furthermore, a court has authority to review the election procedure of a legislative delegation without violating the separation-of-powers doctrine where it is contended that the procedure violates a statute.[15]

It is not for courts to determine whether the legislature is justified in departing from a custom of limiting its session to a certain period[16] or in adjourning and extending its session.[17]

Footnotes

1 Minn.—Scheibel v. Pavlak, 282 N.W.2d 843 (Minn. 1979).
Residency requirements
Okla.—Wixson v. Green, 1974 OK 48, 521 P.2d 817 (Okla. 1974).
S.D.—State ex rel. Walter v. Gutzler, 249 N.W.2d 271 (S.D. 1977).

2 Ind.—State ex rel. Acker v. Reeves, 229 Ind. 126, 95 N.E.2d 838 (1951).

3 R.I.—Bailey v. Burns, 118 R.I. 428, 375 A.2d 203 (1977).

4 Iowa—Des Moines Register and Tribune Co. v. Dwyer, 542 N.W.2d 491 (Iowa 1996).

5 U.S.—Davids v. Akers, 549 F.2d 120 (9th Cir. 1977); Metzenbaum v. Federal Energy Regulatory Commission, 675 F.2d 1282 (D.C. Cir. 1982).
N.Y.—Lewis v. Klein, 45 N.Y.2d 930, 411 N.Y.S.2d 226, 383 N.E.2d 872 (1978).
Legislative budget process
The judiciary is not vested with constitutional superintending authority over the legislative budget process or determinations.
Wis.—Flynn v. Department of Admin., 216 Wis. 2d 521, 576 N.W.2d 245 (1998).
As to the nonjusticiability of political questions involving public funds, see § 397

6 Alaska—Malone v. Meekins, 650 P.2d 351 (Alaska 1982).

7 U.S.—Metzenbaum v. Federal Energy Regulatory Commission, 675 F.2d 1282 (D.C. Cir. 1982); Rangel v. Boehner, 20 F. Supp. 3d 148 (D.D.C. 2013); Greenberg v. Bolger, 497 F. Supp. 756 (E.D. N.Y. 1980).
Ala.—Opinion of the Justices, 381 So. 2d 183 (Ala. 1980).
N.H.—Hughes v. Speaker of the New Hampshire House of Representatives, 152 N.H. 276, 876 A.2d 736 (2005).
N.J.—Application of Forsythe, 185 N.J. Super. 582, 450 A.2d 594 (App. Div. 1982), judgment aff'd, 91 N.J. 141, 450 A.2d 499 (1982).
N.Y.—Urban Justice Center v. Silver, 66 A.D.3d 567, 887 N.Y.S.2d 571 (1st Dep't 2009).

8 Haw.—Schwab v. Ariyoshi, 58 Haw. 25, 564 P.2d 135 (1977).

9 Mich.—LeRoux v. Secretary of State, 465 Mich. 594, 640 N.W.2d 849 (2002).

10 Alaska—Malone v. Meekins, 650 P.2d 351 (Alaska 1982).

Waiver or suspension of rules

Iowa—Carlton v. Grimes, 237 Iowa 912, 23 N.W.2d 883 (1946).

Formalities for enacting laws

(1) The courts are reluctant to inquire into whether the legislature has complied with legislatively prescribed formalities in enacting a statute.

Wis.—Donaldson v. Bd. of Com'rs of Rock-Koshkonong Lake Dist., 2004 WI 67, 272 Wis. 2d 146, 680 N.W.2d 762 (2004).

(2) Members and officers of the legislature act under the solemnity of their oaths, and constitutional provisions setting forth the various steps that are to be taken in the passage of a bill are addressed mainly to the legislature, and thus, it is wise that the courts exercise restraint in reviewing the proceedings of the legislature in enacting laws.

S.D.—In re Rounds, 2003 SD 30, 659 N.W.2d 374 (S.D. 2003).

11 Ala.—Birmingham-Jefferson Civic Center Authority v. City of Birmingham, 912 So. 2d 204 (Ala. 2005).

Ky.—Board of Trustees of Judicial Form Retirement System v. Attorney General of Com., 132 S.W.3d 770 (Ky. 2003).

Authentication of legislation

The courts cannot be authorized to undermine the exclusive constitutional authority of presiding officers of each house of the state legislature to authenticate all legislation.

Ind.—State ex rel. Masariu v. Marion Superior Court No. 1, 621 N.E.2d 1097 (Ind. 1993).

12 Ala.—Town of Brilliant v. City of Winfield, 752 So. 2d 1192 (Ala. 1999).

13 Wis.—Donaldson v. Bd. of Com'rs of Rock-Koshkonong Lake Dist., 2004 WI 67, 272 Wis. 2d 146, 680 N.W.2d 762 (2004).

Impeachment procedure

An impeachment trial within the state senate was not the equivalent of a criminal trial within the judicial system, and thus, the state supreme court refused to rule on the governor's challenge to the senate's procedures and rules despite his claim that his criminal constitutional rights were being violated; impeachment was solely a legislative function, and separation of powers prohibited judicial interference.

Ariz.—Mecham v. Gordon, 156 Ariz. 297, 751 P.2d 957 (1988).

As to the separation-of-powers doctrine, generally, see § 272.

14 Iowa—Des Moines Register and Tribune Co. v. Dwyer, 542 N.W.2d 491 (Iowa 1996).

15 S.C.—Fowler v. Beasley, 322 S.C. 463, 472 S.E.2d 630 (1996).

Access to public records; open-door law

To the extent that statutory enactments under a law requiring access to public records and under an open-door law empower the Judicial Branch to inquire into, and interfere with, internal operations of the state house of representatives, such an application transgresses the separation-of-powers clause of the state constitution.

Ind.—State ex rel. Masariu v. Marion Superior Court No. 1, 621 N.E.2d 1097 (Ind. 1993).

16 Tenn.—Cooper v. Nolan, 159 Tenn. 379, 19 S.W.2d 274 (1929).

17 Ark.—Wells v. Purcell, 267 Ark. 456, 592 S.W.2d 100 (1979).

End of Document

16 C.J.S. Constitutional Law § 426

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

3. Encroachment on, or Interference with, Legislature

b. Legislative Matters

§ 426. Inquiry into motive, policy, wisdom, or expediency of legislation

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2485 to 2498

The courts generally cannot inquire into the motive, policy, wisdom, or expediency of legislation.

As a general rule, in determining the validity of an enactment, the judiciary will not inquire into the motives or reasons of the legislature or of the members thereof.[1] The court may not strike down an otherwise constitutional statute on the basis of an alleged illicit legislative motive,[2] and an inquiry into congressional motives or purposes is limited to cases where the very nature of the constitutional question requires such an inquiry.[3] An otherwise constitutional statute will not be invalidated on the basis of an alleged illicit legislative motive.[4]

It is for the legislature to determine the justice, wisdom, necessity, desirability, or expediency of a law which is within its powers to enact, and such questions are not open to inquiry by the courts.[5] It is not the province of a court to question the wisdom,[6] social desirability, or economic policy underlying a statute as these are matters for the legislature's determination.[7] It is the court's province to determine only the applicability, legality, and constitutionality of a statute.[8]

When searching for legislative intent, a court's duty is simply to construe the legislative will as the court finds it, without regard to the court's own views as to the wisdom or justice of the statute.[9] Moreover, in interpreting statutes, the courts follow the legislature's intent, as exhibited by the plain meaning of the actual words of law, whatever may be thought of the wisdom, expediency, or policy of the act.[10]

It is not the responsibility of the courts, in interpreting a statute, to inquire into the harshness of a legislative enactment, the strategy behind a legislative policy, or even the legislative solution to a particular problem.[11] Thus, although a court should not construe statutory language so as to result in absurd or strained consequences, neither should the court question the wisdom of a statute even though its results seem unduly harsh.[12]

Public policy is primarily a matter for the legislature, not the court, and if there is a statute which addresses the subject in question, the policy reflected therein must prevail,[13] and the economic or social policy of legislation is not open to judicial inquiry.[14] Policy concerns are properly addressed to, and by, legislators[15] because the legislature declares policy, not the courts.[16]

CUMULATIVE SUPPLEMENT

Cases:

A court cannot overrule Congress's judgment based on its own policy views. SCA Hygiene Products Aktiebolag v. First Quality Baby Products, LLC, 137 S. Ct. 954 (2017).

Court's role is not to pass judgment on the wisdom of a law or render an opinion on whether it represents sound social policy; the wisdom, good sense, policy and prudence, or otherwise, of a statute are matters within the province of the Legislature, and not of the court. In re J.S., 121 A.3d 322 (N.J. 2015).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Eastland v. U. S. Servicemen's Fund, 421 U.S. 491, 95 S. Ct. 1813, 44 L. Ed. 2d 324 (1975); Menominee Tribe of Indians v. U. S., 230 Ct. Cl. 408, 677 F.2d 90 (1982).
Kan.—Randall v. Seemann, 228 Kan. 395, 613 P.2d 1376 (1980).
Declaration of purpose not required
Conn.—Williams v. Shapiro, 4 Conn. Cir. Ct. 449, 234 A.2d 376 (1967).

2 U.S.—City of Erie v. Pap's A.M., 529 U.S. 277, 120 S. Ct. 1382, 146 L. Ed. 2d 265 (2000); U. S. v. O'Brien, 391 U.S. 367, 88 S. Ct. 1673, 20 L. Ed. 2d 672 (1968); Bailey v. Callaghan, 715 F.3d 956, 293 Ed. Law Rep. 675 (6th Cir. 2013); Felix v. Young, 536 F.2d 1126 (6th Cir. 1976).
Mo.—Ocello v. Koster, 354 S.W.3d 187 (Mo. 2011).
N.Y.—Gannett Co. v. City of Rochester, 69 Misc. 2d 619, 330 N.Y.S.2d 648 (Sup 1972).

3 U.S.—U. S. v. O'Brien, 391 U.S. 367, 88 S. Ct. 1673, 20 L. Ed. 2d 672 (1968).
Equal protection not license to judge wisdom, fairness, or logic of legislative choices
U.S.—F.C.C. v. Beach Communications, Inc., 508 U.S. 307, 113 S. Ct. 2096, 124 L. Ed. 2d 211 (1993).
Md.—Piscatelli v. Board of Liquor License Com'rs, 378 Md. 623, 837 A.2d 931 (2003).

4 U.S—A.C.L.U. of Nevada v. City of Las Vegas, 466 F.3d 784 (9th Cir. 2006).
Mo.—Ocello v. Koster, 354 S.W.3d 187 (Mo. 2011).

5 U.S.—I.N.S. v. Chadha, 462 U.S. 919, 103 S. Ct. 2764, 77 L. Ed. 2d 317 (1983); Clements v. Fashing, 457 U.S. 957, 102 S. Ct. 2836, 73 L. Ed. 2d 508 (1982); Schweiker v. Hogan, 457 U.S. 569, 102 S. Ct. 2597, 73 L. Ed. 2d 227 (1982).

Colo.—Kallenberger v. Buchanan, 649 P.2d 314 (Colo. 1982).

Mass.—Com. v. Lammi, 386 Mass. 299, 435 N.E.2d 360 (1982).

Mich.—Sessa v. State Treasurer, 117 Mich. App. 46, 323 N.W.2d 586 (1982).

Courts may not sit as superlegislatures

The judiciary may not sit as a superlegislature to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights nor proceed along suspect lines.

U.S.—Kansas City Taxi Cab Drivers Ass'n, LLC v. City of Kansas City, Mo., 742 F.3d 807 (8th Cir. 2013).

6 Ala.—Bandy v. City of Birmingham, 73 So. 3d 1233 (Ala. 2011).

Cal.—Union of American Physicians and Dentists v. Brown, 195 Cal. App. 4th 691, 124 Cal. Rptr. 3d 704 (1st Dist. 2011).

Fla.—Scott v. Williams, 107 So. 3d 379 (Fla. 2013).

Idaho—Sims v. ACI Northwest, Inc., 157 Idaho 906, 342 P.3d 618 (2015).

La.—Soloco, Inc. v. Dupree, 707 So. 2d 12 (La. 1998).

Kan.—Miller v. Johnson, 295 Kan. 636, 289 P.3d 1098 (2012).

La.—State v. R.W.B., 105 So. 3d 54 (La. 2012).

Mass.—Lowery v. Klemm, 446 Mass. 572, 845 N.E.2d 1124 (2006).

Miss.—5K Farms, Inc. v. Mississippi Dept. of Revenue, 94 So. 3d 221 (Miss. 2012).

Mo.—Batek v. Curators of University of Missouri, 920 S.W.2d 895 (Mo. 1996).

N.H.—Board of Trustees of New Hampshire Judicial Retirement Plan v. Secretary of State, 161 N.H. 49, 7 A.3d 1166 (2010).

N.J.—In re P.L. 2001, Chapter 362, 186 N.J. 368, 895 A.2d 1128 (2006).

N.M.—Bounds v. State ex rel. D'Antonio, 2013-NMSC-037, 306 P.3d 457 (N.M. 2013).

N.D.—In re Mangelsen, 2014 ND 31, 843 N.W.2d 8 (N.D. 2014).

Ohio—Ohio Environmental Protection Agency v. Lowry, 2013-Ohio-2779, 994 N.E.2d 912 (Ohio Ct. App. 10th Dist. Franklin County 2013), appeal not allowed, 137 Ohio St. 3d 1440, 2013-Ohio-5678, 999 N.E.2d 695 (2013).

Okla.—Zaloudek Grain Co. v. CompSource Oklahoma, 2012 OK 75, 298 P.3d 520 (Okla. 2012).

Pa.—Pennsylvania State Ass'n of Jury Com'rs v. Com., 621 Pa. 360, 78 A.3d 1020 (2013).

S.D.—State v. Whistler, 2014 SD 58, 851 N.W.2d 905 (S.D. 2014).

7 Mo.—Batek v. Curators of University of Missouri, 920 S.W.2d 895 (Mo. 1996).

8 La.—Soloco, Inc. v. Dupree, 707 So. 2d 12 (La. 1998).

Determination of meaning of federal statute

The court's job, in interpreting a statute is to determine the meaning of the statute passed by Congress, not whether wisdom or logic suggests that Congress could have done better.

U.S.—Sigmon Coal Co., Inc. v. Apfel, 226 F.3d 291 (4th Cir. 2000), aff'd, 534 U.S. 438, 122 S. Ct. 941, 151 L. Ed. 2d 908, 197 A.L.R. Fed. 689 (2002).

Dispute over wisdom of law

A dispute over the wisdom of a law cannot give warrant to a court to overrule the people's legislature.

Mich.—Mayor of City of Lansing v. Michigan Public Service Com'n, 470 Mich. 154, 680 N.W.2d 840 (2004).

9 Mich.—Nummer v. Treasury Dept., 448 Mich. 534, 533 N.W.2d 250 (1995).

Constitutional considerations

(1) Courts cannot be concerned with arguments addressing themselves to the desirability, wisdom, or logic of legislation unless it offends the constitution.

Okla.—Gladstone v. Bartlesville Independent School Dist. No. 30 (I-30), 2003 OK 30, 66 P.3d 442 (Okla. 2003).

(2) Although judges may occasionally doubt the wisdom of a particular law, they are not free to ignore explicit legislative directions unless those directives are clearly unconstitutional.

Tex.—Luquis v. State, 72 S.W.3d 355 (Tex. Crim. App. 2002).

(3) Where the constitutionality of a legislative act is challenged, there is a presumption in favor of its validity, and the court is not at liberty to evaluate the desirability or wisdom of the act.

Okla.—Tulsa County Deputy Sheriff's Fraternal Order of Police, Lodge Number 188 v. Board of County Com'rs of Tulsa County, 2000 OK 2, 995 P.2d 1124 (Okla. 2000).

10 Cal.—People v. Loeun, 17 Cal. 4th 1, 69 Cal. Rptr. 2d 776, 947 P.2d 1313 (1997).

Courts do not make policy judgments

The court of appeals is vested with the authority to interpret the law; however, the court possesses neither the expertise nor the prerogative to make policy judgments.

U.S.—de Osorio v. Mayorkas, 695 F.3d 1003 (9th Cir. 2012), cert. granted, 133 S. Ct. 2853, 186 L. Ed. 2d 907 (2013) and rev'd and remanded on other grounds, 134 S. Ct. 2191, 189 L. Ed. 2d 98 (2014).

As to the role of the courts in interpreting statutes, generally, see § 414.

11 N.M.—Cummings v. X-Ray Associates of New Mexico, P.C., 1996-NMSC-035, 121 N.M. 821, 918 P.2d 1321 (1996).

Setting of public policy by enactment of statutes

As general rule, the public policy of a state is set by the legislature through its enactment of statutes, and the state supreme court may not concern itself with the wisdom of such statutes.

Mont.—Duck Inn, Inc. v. Montana State University-Northern, 285 Mont. 519, 949 P.2d 1179, 123 Ed. Law Rep. 351 (1997).

12 Wash.—Duke v. Boyd, 133 Wash. 2d 80, 942 P.2d 351 (1997).

13 U.S.—Regan v. Taxation With Representation of Washington, 461 U.S. 540, 103 S. Ct. 1997, 76 L. Ed. 2d 129 (1983); Schweiker v. Wilson, 450 U.S. 221, 101 S. Ct. 1074, 67 L. Ed. 2d 186 (1981).

Fla.—State v. Yu, 400 So. 2d 762 (Fla. 1981).

Ind.—Walton v. State, 272 Ind. 398, 398 N.E.2d 667 (1980).

Iowa—State v. Boland, 309 N.W.2d 438 (Iowa 1981).

N.J.—Paul Kimball Hospital, Inc. v. Brick Tp. Hospital, Inc., 86 N.J. 429, 432 A.2d 36 (1981).

Va.—Infants v. Virginia Housing Development Authority, 221 Va. 659, 272 S.E.2d 649 (1980).

Wis.—State v. Princess Cinema of Milwaukee, Inc., 96 Wis. 2d 646, 292 N.W.2d 807 (1980).

14 U.S.—City of Mobile, Ala. v. Bolden, 446 U.S. 55, 100 S. Ct. 1490, 64 L. Ed. 2d 47 (1980).

Mo.—Winston v. Reorganized School Dist. R-2, Lawrence County, Miller, 636 S.W.2d 324, 5 Ed. Law Rep. 1287 (Mo. 1982).

Va.—Infants v. Virginia Housing Development Authority, 221 Va. 659, 272 S.E.2d 649 (1980).

15 U.S.—Adirondack Medical Center v. Sebelius, 740 F.3d 692 (D.C. Cir. 2014).

Fla.—Thrivent Financial for Lutherans v. State, Dept. of Financial Services, 145 So. 3d 178 (Fla. 1st DCA 2014).

16 Cal.—Strong v. Superior Court, 198 Cal. App. 4th 1076, 132 Cal. Rptr. 3d 18 (4th Dist. 2011).

Conn.—Sic v. Nunan, 307 Conn. 399, 54 A.3d 553 (2012).

Del.—Sternberg v. Nanticoke Memorial Hosp., Inc., 62 A.3d 1212 (Del. 2013).

Kan.—State v. Cheeks, 298 Kan. 1, 310 P.3d 346 (2013).

Md.—Cunningham v. Feinberg, 441 Md. 310, 107 A.3d 1194 (2015).

Mich.—Myers v. City of Portage, 304 Mich. App. 637, 848 N.W.2d 200 (2014).

N.C.—Duke Energy Carolinas, LLC v. Gray, 766 S.E.2d 354 (N.C. Ct. App. 2014).

Ohio—State ex rel. Triplett v. Ross, 111 Ohio St. 3d 231, 2006-Ohio-4705, 855 N.E.2d 1174 (2006).

Pa.—Conway v. Cutler Group, Inc., 99 A.3d 67 (Pa. 2014).

Wis.—In re Refusal of Anagnos, 2012 WI 64, 341 Wis. 2d 576, 815 N.W.2d 675 (2012).

End of Document

16 C.J.S. Constitutional Law § 427

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

3. Encroachment on, or Interference with, Legislature

b. Legislative Matters

§ 427. Inquiry into motive, policy, wisdom, or expediency of legislation—Reasonableness, classification

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2485 to 2498

The reasonableness of a statute and the policy, wisdom, or expediency of a legislative classification are generally matters for the legislature.

Although in determining the validity of legislation as an exercise of police power, courts may inquire into its reasonableness,[1] the reasonableness of a statute generally is primarily a matter for the legislature, beyond the province of the courts,[2] unless organic law is thereby violated.[3]

Classification.

The policy, wisdom, or expediency of a legislative classification is not subject to judicial question or review unless the classification is manifestly arbitrary or unreasonable.[4] It is not the function of the court to hypothesize independently on the

desirability or feasibility of any possible alternatives to the statutory scheme.[5] However, whether or not such a classification is purely arbitrary or is reasonable and within the legislative discretion is, in controverted cases, a subject for judicial review and determination.[6]

Footnotes

1 § 717.

2 U.S.—Peick v. Pension Ben. Guar. Corp., 539 F. Supp. 1025 (N.D. Ill. 1982), judgment aff'd, 724 F.2d 1247 (7th Cir. 1983).
Minn.—Costley v. Caromin House, Inc., 313 N.W.2d 21 (Minn. 1981).
Or.—State v. Reams, 292 Or. 1, 636 P.2d 913 (1981).
Tex.—Pennington v. Singleton, 606 S.W.2d 682 (Tex. 1980).
Rational basis review
Rational basis review does not provide a license for courts to judge the wisdom, fairness, or logic of legislative choices; a court asks only whether there are plausible reasons for Congress's action, and if there are, its inquiry is at an end.
U.S.—Romero-Ochoa v. Holder, 712 F.3d 1328 (9th Cir. 2013).

3 Neb.—State ex rel. Quinn v. Marsh, 141 Neb. 436, 3 N.W.2d 892 (1942).

4 U.S.—Rankin v. Thone, 512 F. Supp. 507 (D. Neb. 1980).
La.—Inn of Hammond, Inc. v. State, Dept. of Transp. and Development, 376 So. 2d 1318 (La. Ct. App. 1st Cir. 1979).
Wash.—Automobile Drivers & Demonstrators Union Local No. 882 v. Department of Retirement Systems, 92 Wash. 2d 415, 598 P.2d 379 (1979).

5 U.S.—Caban v. Mohammed, 441 U.S. 380, 99 S. Ct. 1760, 60 L. Ed. 2d 297 (1979).
Equal protection challenges
(1) In applying the rational basis standard to equal protection challenges under the state constitution, the court is not concerned with the wisdom or correctness of the legislative determination; rather, the court determines only whether there was a reasonable basis upon which the legislature enacted the challenged statute.
Wis.—Czapinski v. St. Francis Hosp., Inc., 2000 WI 80, 236 Wis. 2d 316, 613 N.W.2d 120 (2000).
(2) Under rational basis review of an equal protection challenge to a statute, the Supreme Court will not substitute its judgment for that of the legislature as to the wisdom, social desirability, or economic policy underlying a statute.
Mo.—State v. Pike, 162 S.W.3d 464 (Mo. 2005).

6 Ohio—City of Columbus ex rel. Falter v. Columbus Metropolitan Housing Authority, 33 Ohio Op. 212, 67 N.E.2d 338 (C.P. 1946), judgment aff'd, 47 Ohio L. Abs. 280, 68 N.E.2d 108 (Ct. App. 2d Dist. Franklin County 1946).

16 C.J.S. Constitutional Law § 428

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

4. Encroachment on, or Interference with, Executive Branch of Government

§ 428. Judiciary's interference with Executive Branch, generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2540 to 2560

The judiciary may not encroach on the Executive Branch of government.

The doctrine of separation of powers compels the judiciary to give respect to the independence of the Executive Branch.[1] As a general rule, and in the absence of constitutional authorization, the Judicial Branch of the government cannot encroach upon the Executive Branch by exercising its powers and functions[2] unless such exercise is intimately connected with, and necessary or auxiliary to, the exercise of strictly judicial powers.[3] While the judiciary has the authority to judge the legality[4] or reasonableness[5] of executive action, in the absence of actual present or immediately threatened injury,[6] the judiciary will not consider the wisdom or necessity of executive action.[7] Nor will the courts inquire into the motives of the executive[8] or the mental processes of public officials by means of which governmental action is determined.[9] Similarly, the judiciary will leave to the executive the task of determining public policy.[10]

Presidential privilege.

Neither the doctrine of separation of powers nor the need for confidentiality of high level communications can, without more, sustain an absolute and unqualified presidential privilege of immunity from judicial process under all circumstances.[11] However, while the legitimate needs of judicial process may outweigh presidential privilege,[12] this does not free the judiciary from according high respect to representations made on behalf of the executive.[13]

Footnotes

1 Iowa—State v. Hager, 630 N.W.2d 828 (Iowa 2001).
As to the separation-of-powers doctrine, generally, see § 272.
Balance of interest
The separation-of-powers doctrine does not bar every exercise of jurisdiction over the President of the United States, but a court must balance the constitutional weight of interest to be served against the dangers of intrusion on the authority and functions of Executive Branch, before exercising jurisdiction.
U.S.—Nixon v. Fitzgerald, 457 U.S. 731, 102 S. Ct. 2690, 73 L. Ed. 2d 349 (1982).

2 U.S.—Slocum v. Delaware, L. & W.R. Co., 339 U.S. 239, 70 S. Ct. 577, 94 L. Ed. 795 (1950).
Ala.—Carter v. State ex rel. Bullock County, 393 So. 2d 1368 (Ala. 1981).
D.C.—Matter of An Inquiry into Allegations of Misconduct Against Juveniles Detained at and Committed at Cedar Knoll Inst., Dept. of Human Resources, 430 A.2d 1087 (D.C. 1981).
Md.—Hamilton v. Verdow, 287 Md. 544, 414 A.2d 914, 10 A.L.R.4th 333 (1980).
Tex.—Beall v. Strake, 609 S.W.2d 885 (Tex. Civ. App. Austin 1980), writ refused n.r.e., (Apr. 15, 1981).
Actions or operations of government
(1) Not even the most general clauses of the United States Constitution should be read as conferring upon the courts the right to superintend every action of government that may adversely affect some citizen.
U.S.—Loge v. U.S., 662 F.2d 1268 (8th Cir. 1981).
(2) The courts are disinclined to become involved with the day-to-day operations of government.
N.Y.—Young v. City of Binghamton, 112 Misc. 2d 1017, 447 N.Y.S.2d 1017 (Sup 1982).
Avoidance of constitutional confrontation
Occasions for constitutional confrontation between the executive and Judicial Branches of the federal government should be avoided whenever possible.
U.S.—Cheney v. U.S. Dist. Court for Dist. of Columbia, 542 U.S. 367, 124 S. Ct. 2576, 159 L. Ed. 2d 459 (2004).

3 Nev.—Galloway v. Truesdell, 83 Nev. 13, 422 P.2d 237 (1967).
Proper and efficient operation of court
Ohio—In re Furnishings and Equipment for Judge, Courtroom and Personnel for Courtroom Two, 66 Ohio St. 2d 427, 20 Ohio Op. 3d 367, 423 N.E.2d 86 (1981).
Specific performance
Judicial power to order specific performance of plea bargain agreements does not violate the doctrine of separation of powers because it derives from the court's exercise of its supervisory powers.
U.S.—U.S. v. Serubo, 502 F. Supp. 290 (E.D. Pa. 1980).

4 U.S.—Holtzman v. Schlesinger, 414 U.S. 1304, 94 S. Ct. 1, 38 L. Ed. 2d 18 (1973); Sindona v. Grant, 619 F.2d 167 (2d Cir. 1980).
Tenn.—Polk County v. State Bd. of Equalization, 484 S.W.2d 49 (Tenn. Ct. App. 1972).

5 U.S.—General Tel. Co. of Southwest v. U.S., 449 F.2d 846 (5th Cir. 1971); Blackwell v. Issaquena County Bd. of Ed., 363 F.2d 749 (5th Cir. 1966); Speake v. Grantham, 317 F. Supp. 1253 (S.D. Miss. 1970), order aff'd, 440 F.2d 1351 (5th Cir. 1971).
High rates
Although the courts cannot regulate rates of public utilities, the determination of whether rates fixed by a utility are unreasonably high is a judicial function.
Tex.—State v. Southwestern Bell Tel. Co., 526 S.W.2d 526 (Tex. 1975).

6 U.S.—Laird v. Tatum, 408 U.S. 1, 92 S. Ct. 2318, 33 L. Ed. 2d 154 (1972).

7 U.S.—Holtzman v. Schlesinger, 414 U.S. 1304, 94 S. Ct. 1, 38 L. Ed. 2d 18 (1973); Sindona v. Grant, 619 F.2d 167 (2d Cir. 1980); Newdow v. Roberts, 603 F.3d 1002 (D.C. Cir. 2010).

Cal.—Service Employees Intern. Union, Local 1000 v. Brown, 197 Cal. App. 4th 252, 128 Cal. Rptr. 3d 711 (1st Dist. 2011), as modified on denial of reh'g, (Aug. 4, 2011).

La.—Basco v. State Through Dept. of Corrections, 335 So. 2d 457 (La. Ct. App. 1st Cir. 1976), writ denied, 338 So. 2d 701 (La. 1976).

N.Y.—Jones v. Beame, 45 N.Y.2d 402, 408 N.Y.S.2d 449, 380 N.E.2d 277 (1978).

Wis.—Joint School Dist. No. 1, of Town of Wabeno v. State, 56 Wis. 2d 790, 203 N.W.2d 1 (1973).

As to the general prohibition against judicial review of the wisdom of legislative acts, see § 426.

Desirability

An executive act is not to be held unconstitutional simply because the court disagrees with its desirability.

Cal.—County of Orange v. Heim, 30 Cal. App. 3d 694, 106 Cal. Rptr. 825 (4th Dist. 1973).

Allocation of resources by mayor

A court will decline, on separation of powers grounds, to review a mayor's exercise of discretion to allocate scarce solid-waste management funds so as to discontinue a curbside recycling program in order to continue garbage collection and alley cleaning despite an environmental group's argument that more funds would be expended to cancel the recycling program than to continue it.

D.C.—District of Columbia v. Sierra Club, 670 A.2d 354 (D.C. 1996).

Personnel decision

Even where a public employee's speech does not touch upon a matter of public concern, speech is not totally beyond the protection of the First Amendment of the United States Constitution, but absent most unusual circumstances, a federal court is not the appropriate forum in which to review the wisdom of a personnel decision taken by a public agency, allegedly in reaction to the employee's behavior.

U.S.—Rankin v. McPherson, 483 U.S. 378, 107 S. Ct. 2891, 97 L. Ed. 2d 315 (1987).

8 U.S.—Schaffer v. Kissinger, 505 F.2d 389 (D.C. Cir. 1974).

Cal.—In re Fain, 65 Cal. App. 3d 376, 135 Cal. Rptr. 543 (1st Dist. 1976).

Where purpose obvious

A court does not engage in a proscribed inquiry into the motivation for an executive action when the court perceives its purpose to be obvious on the face of the action itself.

Cal.—Mandel v. Hodges, 54 Cal. App. 3d 596, 127 Cal. Rptr. 244, 90 A.L.R.3d 728 (1st Dist. 1976).

9 U.S.—Carl Zeiss Stiftung v. V. E. B. Carl Zeiss, Jena, 40 F.R.D. 318 (D. D.C. 1966), judgment aff'd, 384 F.2d 979 (D.C. Cir. 1967).

N.J.—State v. Mitchell, 164 N.J. Super. 198, 395 A.2d 1257 (App. Div. 1978).

10 U.S.—I. C. C. v. Appleyard, 513 F.2d 575 (4th Cir. 1975); Harrison v. Indiana Auto Shredders Co., 528 F.2d 1107 (7th Cir. 1975).

N.Y.—Drake v. State, 97 Misc. 2d 1015, 416 N.Y.S.2d 734 (Ct. Cl. 1979), judgment aff'd, 73 A.D.2d 1031, 425 N.Y.S.2d 532 (4th Dep't 1980) and judgment aff'd, 75 A.D.2d 1017, 432 N.Y.S.2d 676 (4th Dep't 1980) and judgment aff'd, 75 A.D.2d 1016, 432 N.Y.S.2d 676 (4th Dep't 1980).

Or.—Stevenson v. State Dept. of Transp., 290 Or. 3, 619 P.2d 247 (1980).

Determining and implementing policy

The courts are limited to the exercise of judicial power in interpreting and applying the law and may not usurp the executive power of implementing such policy.

Kan.—State ex rel. Tomasic v. Unified Government of Wyandotte County/Kansas City, Kan., 264 Kan. 293, 955 P.2d 1136 (1998).

Administrative questions

The courts cannot decide administrative questions.

U.S.—Pearson v. Easy Living, Inc., 534 F. Supp. 884 (S.D. Ohio 1981).

Assumptions relied upon in formulating policy

The courts are devoid of power to evaluate sociological, psychological, and educational assumptions relied upon by an education commissioner in the formulation of policy.

N.Y.—Etter v. Littwitz, 49 Misc. 2d 934, 268 N.Y.S.2d 885 (Sup 1966), judgment aff'd, 28 A.D.2d 825, 282 N.Y.S.2d 724 (4th Dep't 1967).

11 U.S.—U.S. v. Nixon, 418 U.S. 683, 94 S. Ct. 3090, 41 L. Ed. 2d 1039 (1974).

12 U.S.—U.S. v. Nixon, 418 U.S. 683, 94 S. Ct. 3090, 41 L. Ed. 2d 1039 (1974).

Illegal acts

Any evidence which concerns the government's illegal acts is not properly subject to a claim of executive privilege, nor is any evidence which refutes such an allegation.

U.S.—Black v. Sheraton Corp. of America, 371 F. Supp. 97, 18 Fed. R. Serv. 2d 563 (D.D.C. 1974).

13 U.S.—U.S. v. Nixon, 418 U.S. 683, 94 S. Ct. 3090, 41 L. Ed. 2d 1039 (1974).

End of Document

16 C.J.S. Constitutional Law § 429

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

4. Encroachment on, or Interference with, Executive Branch of Government

§ 429. Effect of separation-of-powers doctrine

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2540 to 2560

The separation-of-powers doctrine does not bar the judicial department from all involvement in all actions that involve the Executive Branch.

The principle of separation of powers does not mean that the branches of the federal government ought to have no partial agency in, or no control over the acts of each other, and the fact that a federal court's exercise of its traditional jurisdiction under Article III of the United States Constitution may significantly burden the time and attention of the chief executive is not sufficient to establish a violation of the United States Constitution.[1] For example, the separation-of-powers doctrine does not obliterate the obligation and authority of the Judicial Branch to investigate and discipline prosecutors.[2] Likewise, the doctrine of separation of powers does not require federal courts to stay all private actions against the President of the United States until the President leaves office.[3] The separation-of-powers doctrine does, however, prevent courts from passing judgment on administrative fiscal matters barring a specific challenge that is rooted in grounds of arbitrariness or capriciousness.[4]

CUMULATIVE SUPPLEMENT

Cases:

In light of dangers of judicial involvement, interbranch information dispute between House Committee on the Judiciary and the Executive Branch was not within the Article III judicial power to resolve Cases or Controversies, and thus, federal court lacked jurisdiction for Committee's action seeking declaratory and injunctive relief to require former White House Counsel to comply with a subpoena and appear before Committee to testify in connection with Committee's investigation of Russian interference in 2016 presidential election and Special Counsel's findings of fact concerning potential obstruction of justice by President; dangers of judicial involvement were particularly stark because few cases could so concretely present a direct clash between the political branches, which were locked in bitter political showdown that raised a contentious constitutional issue regarding Executive Branch's claim of absolute testimonial immunity. U.S. Const. art. 3, § 2, cl. 1. Committee on Judiciary v. McGahn, 951 F.3d 510 (D.C. Cir. 2020).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Clinton v. Jones, 520 U.S. 681, 117 S. Ct. 1636, 137 L. Ed. 2d 945 (1997).
Executive privilege
Executive privilege is a privilege required by the separation-of-powers doctrine under a state constitutional provision.
Alaska—Capital Information Group v. State, Office of Governor, 923 P.2d 29 (Alaska 1996).
Under Ethics in Government Act
The Ethics in Government Act does not violate the separation-of-powers doctrine by reducing the President's ability to control prosecutorial powers exercised by the independent counsel in that the Act does not unduly limit the functions of the Executive Branch in the Judicial Branch.
U.S.—Morrison v. Olson, 487 U.S. 654, 108 S. Ct. 2597, 101 L. Ed. 2d 569 (1988).
As to the effect of the separation-of-powers doctrine in determining the nature and scope of the powers of governmental departments, see § 384.

2 Conn.—Massameno v. Statewide Grievance Committee, 234 Conn. 539, 663 A.2d 317 (1995).

3 U.S.—Clinton v. Jones, 520 U.S. 681, 117 S. Ct. 1636, 137 L. Ed. 2d 945 (1997).
Decisional and policymaking functions
Executive privilege extends not only to military and diplomatic secrets but also to documents integral to an appropriate exercise of the executive's domestic decisional and policymaking functions, that is, those documents reflecting the frank expression necessary in intragovernment advisory and deliberative communications.
U.S—Black v. Sheraton Corp. of America, 371 F. Supp. 97, 18 Fed. R. Serv. 2d 563 (D.D.C. 1974).

4 W. Va.—County Com'n of Greenbrier County v. Cummings, 228 W. Va. 464, 720 S.E.2d 587 (2011).

16 C.J.S. Constitutional Law § 430

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

4. Encroachment on, or Interference with, Executive Branch of Government

§ 430. Judicial review and intervention

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2540, 2541

Decisions of executive and administrative officers are subject to judicial review based upon the concept of checks and balances and the separation-of-powers doctrine.

Decisions of executive and administrative officers are subject to judicial review based upon the concepts of checks and balances and the separation of powers.[1] However, judicial review of decisions made by the Executive Branch of government is limited.[2]

Where the question is properly raised,[3] courts may determine whether such officers and boards are complying with the legal requirements fixing their province and governing their actions[4] in making findings of facts,[5] rendering orders,[6] or promulgating rules and regulations.[7] Courts may also receive new evidence to determine whether such officers or bodies acted within the scope of their authority[8] and may restrain[9] or rectify[10] their improper acts.

Courts may review the exercise of discretion by executive or administrative officers and boards if it appears that their action was based on misconception of law, or ignorance through lack of inquiry, or was the result of arbitrary will or caprice or improper

influence or in violation of law[11] and may intervene to correct or prevent acts in abuse of their discretion[12] or to protect property rights threatened by their wrongful acts.[13]

Where administrative orders are based on clear errors of law, fraud, or mistake, they may be avoided by a direct attack.[14] The courts may also review the exercise of discretion by such boards or officers where the executive action is unreasonable,[15] amounts to bad faith,[16] or results in an injustice.[17]

The courts also may set inside the findings of an administrative agency if they are contrary to the manifest weight of the evidence.[18] However, the judicial function ordinarily is exhausted when there is found to be a rational basis for the conclusions approved by an administrative body.[19]

The exercise of some authority, discretion, or judgment may be incident or necessary to the performance even of ministerial duties, but such authority, discretion, or judgment is subject to judicial review,[20] and a court may require an officer to act in good faith under the circumstances.[21]

Finality of action.

A final action by the executive agency generally is required before the judiciary can act.[22]

De novo review.

In some instances, the court is empowered to review de novo an executive decision.[23]

CUMULATIVE SUPPLEMENT

Cases:

The longstanding practice of the Legislative Branch and the Executive Branch, of resolving, without benefit of guidance from the Supreme Court, disputes concerning congressional efforts to seek official Executive Branch information, is a consideration of great weight in cases concerning the allocation of power between the two elected branches of Government, and it imposes on the Supreme Court a duty of care to ensure that it does not needlessly disturb the compromises and working arrangements that those Branches themselves have reached. Trump v. Mazars USA, LLP, 140 S. Ct. 2019, 207 L. Ed. 2d 951 (2020).

Courts are without authority to interfere with any proper exercise of the legislative prerogative or with the lawful exercise of administrative authority or discretion. West's Ann.Md. Const.Declaration of Rights, Art. 8. County Council of Prince George's County v. Zimmer Development Co., 444 Md. 490, 120 A.3d 677 (2015).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—U.S. v. Hastings, 447 F. Supp. 534 (E.D. Ark. 1977).
N.Y.—Atkins v. Medical Examiner of Westchester County, 100 Misc. 2d 296, 418 N.Y.S.2d 839 (Sup 1979).

Ohio—State ex rel. Celebrezze v. Court of Common Pleas of Butler County, 60 Ohio St. 2d 188, 14 Ohio Op. 3d 441, 398 N.E.2d 777 (1979).

As to the separation-of-powers doctrine, generally, see § 272.

2 U.S.—Yassini v. Crosland, 618 F.2d 1356 (9th Cir. 1980).

Mont.—Matter of Dewar, 169 Mont. 437, 548 P.2d 149 (1976).

N.Y.—Devitt v. Heimbach, 109 Misc. 2d 463, 440 N.Y.S.2d 465 (Sup 1981).

As to the inherent power of the courts, generally, see § 387.

As to the general prohibition against interference by the courts with statutory duties of the Executive Branch, see § 431.

Comity; consideration of interests of Executive Branch

Comity is not limited to the Judicial Branch of a state government, and the interests of the Executive Branch should be considered as well.

U.S.—Calderon v. Thompson, 523 U.S. 538, 118 S. Ct. 1489, 140 L. Ed. 2d 728 (1998).

3 Ohio—Burger Brewing Co. v. Liquor Control Commission, Dept. of Liquor Control, 34 Ohio St. 2d 93, 63 Ohio Op. 2d 149, 296 N.E.2d 261 (1973).

4 U.S.—Stark v. Wickard, 321 U.S. 288, 64 S. Ct. 559, 88 L. Ed. 733 (1944); Purnell v. Edelman, 511 F.2d 1248 (7th Cir. 1974); Associated Builders & Contractors of Texas Gulf Coast, Inc. v. U.S. Dept. of Energy, 451 F. Supp. 281 (S.D. Tex. 1978).

Mich.—Lepofsky v. City of Lincoln Park, 48 Mich. App. 347, 210 N.W.2d 517 (1973).

Ohio—Central Motors Corp. v. City of Pepper Pike, 63 Ohio App. 2d 34, 13 Ohio Op. 3d 347, 17 Ohio Op. 3d 240, 409 N.E.2d 258 (8th Dist. Cuyahoga County 1979).

Exceeding delegated powers

Whether an executive agency has exceeded its delegated powers is a matter for judicial determination.

S.D.—Warner Independent School Dist. No. 230 of Brown County v. County Bd. of Ed. of Brown County, 85 S.D. 161, 179 N.W.2d 6 (1970).

5 U.S.—U.S. v. Carolina Freight Carriers Corporation, 315 U.S. 475, 62 S. Ct. 722, 86 L. Ed. 971 (1942); Dismuke v. U.S., 297 U.S. 167, 56 S. Ct. 400, 80 L. Ed. 561 (1936).

6 Tex.—Fire Dept. of City of Fort Worth v. City of Fort Worth, 147 Tex. 505, 217 S.W.2d 664 (1949).

Wash.—Morgan v. Department of Social Sec., 14 Wash. 2d 156, 127 P.2d 686 (1942).

7 U.S.—Walling v. McCracken County Peach Growers Ass'n, 50 F. Supp. 900 (W.D. Ky. 1943).

Cal.—Knudsen Creamery Co. of Cal. v. Brock, 37 Cal. 2d 485, 234 P.2d 26 (1951).

Kan.—Butler v. Rude, 162 Kan. 588, 178 P.2d 261 (1947).

8 U.S.—U.S. v. International Freighting Corp., 20 F. Supp. 357 (S.D. N.Y. 1937).

Ill.—Illinois Bell Telephone Co. v. Fox, 402 Ill. 617, 85 N.E.2d 43 (1949).

9 U.S.—Nelson v. Secretary of Agriculture, 133 F.2d 453 (C.C.A. 7th Cir. 1943); Grueschow v. Harris, 492 F. Supp. 419, 30 Fed. R. Serv. 2d 136 (D.S.D. 1980), judgment aff'd, 633 F.2d 1264 (8th Cir. 1980).

N.Y.—Haydon v. Proskauer, 281 A.D. 483, 120 N.Y.S.2d 322 (1st Dep't 1953).

10 U.S.—Michigan Head Start Directors Ass'n v. Butz, 397 F. Supp. 1124 (W.D. Mich. 1975); Mara v. U.S., 54 F.2d 397 (S.D. N.Y. 1931).

Conn.—State Water Com'n v. City of Norwich, 141 Conn. 442, 107 A.2d 270 (1954).

Notice

Consideration, from a constitutional standpoint, as to whether a defendant had sufficient notice that an earlier presidential proclamation of a national emergency might be applicable to an act committed years later does not infringe on the doctrine of separation of powers.

U.S.—U.S. v. Bishop, 555 F.2d 771 (10th Cir. 1977).

11 U.S.—Dismuke v. U.S., 297 U.S. 167, 56 S. Ct. 400, 80 L. Ed. 561 (1936); Montana Wilderness Ass'n, Hamilton, Montana v. Hodel, 380 F. Supp. 879 (D. Mont. 1974).

La.—Crick v. Ward Four Recreation Commission, 256 So. 2d 840 (La. Ct. App. 3d Cir. 1972).

Pa.—In re Report of Audit of South Union Tp. for 1975, 47 Pa. Commw. 1, 407 A.2d 906 (1979).

Different theory

A court does not impermissibly substitute a judicial judgment for an administrative decision by relying on a different theory than that used in making the administrative decision.

U.S.—Inter-Island Transport Line, Inc. v. Government of Virgin Islands, 13 V.I. 362, 539 F.2d 322 (3d Cir. 1976).

As to the general prohibition against interference by the courts with administrative actions or determinations, see § 432.

As to substitution of, or interference with, discretionary decisions of the Executive Branch, generally, see § 433.

12 Ga.—Nelson v. Spalding County, 249 Ga. 334, 290 S.E.2d 915 (1982).
Mich.—People v. Heiler, 79 Mich. App. 714, 262 N.W.2d 890 (1977).
N.C.—Jones v. Nash County General Hospital, 1 N.C. App. 33, 159 S.E.2d 252 (1968).
Ohio—Lowry v. City of Cleveland, 36 Ohio Misc. 19, 63 Ohio Op. 2d 32, 65 Ohio Op. 2d 29, 290 N.E.2d 865 (C.P. 1972).
Pa.—In re Report of Audit of South Union Tp. for 1975, 47 Pa. Commw. 1, 407 A.2d 906 (1979).
W. Va.—Sticklen v. Kittle, 168 W. Va. 147, 287 S.E.2d 148, 2 Ed. Law Rep. 897 (1981).

13 U.S.—U.S. v. Hudspeth, 384 F.2d 683 (9th Cir. 1967); Fallbrook Public Utility Dist. v. U.S. Dist. Court, Southern Dist. Cal., Southern Division, 202 F.2d 942 (9th Cir. 1953).
Mich.—General Tel. Co. of Mich. v. Michigan Public Service Commission, 341 Mich. 620, 67 N.W.2d 882 (1954).

14 Ga.—Nelson v. Spalding County, 249 Ga. 334, 290 S.E.2d 915 (1982).
La.—Crick v. Ward Four Recreation Commission, 256 So. 2d 840 (La. Ct. App. 3d Cir. 1972).
Tenn.—Polk County v. State Bd. of Equalization, 484 S.W.2d 49 (Tenn. Ct. App. 1972).
W. Va.—Sticklen v. Kittle, 168 W. Va. 147, 287 S.E.2d 148, 2 Ed. Law Rep. 897 (1981).

15 Cal.—Mid-Way Cabinet Fixture Mfg. v. San Joaquin County, 257 Cal. App. 2d 181, 65 Cal. Rptr. 37 (3d Dist. 1967).
Kan.—Baker v. Unified School Dist. No. 346, Linn County, 206 Kan. 581, 480 P.2d 409 (1971).
N.J.—Cranberry Lake Quarry Co. v. Johnson, 95 N.J. Super. 495, 231 A.2d 837 (App. Div. 1967).

16 Kan.—Baker v. Unified School Dist. No. 346, Linn County, 206 Kan. 581, 480 P.2d 409 (1971).
N.J.—Anderson v. Sills, 56 N.J. 210, 265 A.2d 678 (1970).
Pa.—Harrington v. Tate, 435 Pa. 176, 254 A.2d 622 (1969).

17 Ill.—Bruni v. Department of Registration and Ed., 8 Ill. App. 3d 321, 290 N.E.2d 295 (1st Dist. 1972), judgment aff'd, 59 Ill. 2d 6, 319 N.E.2d 37 (1974).

18 Ill.—Harrison v. Civil Service Commission of City of Chicago, 1 Ill. 2d 137, 115 N.E.2d 521 (1953).
Mich.—In re Manufacturer's Freight Forwarding Co., 294 Mich. 57, 292 N.W. 678 (1940).

19 U.S.—Cook County College Teachers Union, Local 1600, Am. Federation of Teachers, AFL-CIO v. Byrd, 456 F.2d 882, 15 Fed. R. Serv. 2d 1408 (7th Cir. 1972).
Mass.—Attorney General v. Commissioner of Ins., 370 Mass. 791, 353 N.E.2d 745 (1976).

20 Fla.—Bailey v. Van Pelt, 78 Fla. 337, 78 Fla. 353, 82 So. 789 (1919).
Ky.—Com. ex rel. Harper v. Graham, 302 Ky. 192, 194 S.W.2d 377 (1946).

21 Pa.—Com. ex rel. Kelley v. Pommer, 330 Pa. 421, 199 A. 485 (1938).

22 U.S.—North Philadelphia Community Bd. v. Temple University of Commonwealth System of Higher Ed., 330 F. Supp. 1107 (E.D. Pa. 1971).

Final action

A government action is "final," within the meaning of a rule that a court will intervene in a decision of the Executive Branch which directly results in the violation of a legal right, where the impact on the petitioner of a decision by the Executive Branch will at no future time become more conclusive, definite, or substantial.
U.S.—Brown v. Donielson, 334 F. Supp. 294 (S.D. Iowa 1971).

23 Kan.—Muntzert v. A. B. C. Drug Co., 206 Kan. 331, 478 P.2d 198 (1970).
R.I.—Weeks v. Personnel Bd. of Review of Town of North Kingstown, 118 R.I. 243, 373 A.2d 176 (1977).

End of Document

16 C.J.S. Constitutional Law § 431

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

4. Encroachment on, or Interference with, Executive Branch of Government

§ 431. Interference with statutory duties

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2540

The judicial department of the government generally may not interfere with performance by the Executive Branch of its statutory duties, but the judiciary has the power to construe statutes to determine if an executive officer has exceeded his or her statutory powers.

The judiciary cannot interfere with the Executive Branch of government in the performance of its statutory duties,[1] and the courts may not take away from the powers granted to the Executive Branch by the legislature.[2] Furthermore, where the Executive Branch has been empowered by the legislature to act in a particular area, the judiciary is prohibited from acting in that area.[3] However, the judiciary has the power to construe statutes to determine if an executive officer has exceeded the officer's statutory powers.[4] Thus, although judicial review is not available to assess a particular exercise of presidential discretion, a court may ensure that the President was in fact exercising authority conferred by the act at issue.[5]

Footnotes

1 U.S.—Lindenau v. Alexander, 663 F.2d 68 (10th Cir. 1981).
Colo.—Whittington v. Bray, 200 Colo. 17, 612 P.2d 72 (1980).
N.Y.—Bartlett v. Morgan, 42 A.D.2d 435, 348 N.Y.S.2d 418 (4th Dep't 1973).
As to the general prohibition against encroachment by the courts on legislative functions by interpreting, annulling, or amending laws, see §§ 413 to 416.
Intent of Congress
Generally, an executive action which is clearly consistent with the intent of Congress is deemed to be an action of the sovereign and will not be further examined by the judiciary in the absence of a substantial allegation of unconstitutionality.
U.S.—Michigan Head Start Directors Ass'n v. Butz, 397 F. Supp. 1124 (W.D. Mich. 1975).
Interpretation of law
A court cannot direct the specific manner in which the commissioner of banking and finance is to perform the duties of that office except that the commissioner must perform those duties in accordance with the interpretation of the law given by the court.
Ga.—Citizens & Southern Nat. Bank v. Independent Bankers Ass'n of Georgia, Inc., 231 Ga. 421, 202 S.E.2d 78 (1973).
Presidential proclamation
If the President's action of issuing a proclamation is authorized by the statutes relied upon, the judiciary may not properly inquire into the President's reasoning or into the existence of facts calling for the action taken.
U.S.—U. S. Cane Sugar Refiners' Ass'n v. Block, 3 Ct. Int'l Trade 196, 544 F. Supp. 883 (1982), judgment aff'd, 683 F.2d 399 (C.C.P.A. 1982).

2 U.S.—U.S. v. Hossbach, 518 F. Supp. 759 (E.D. Pa. 1980).
Mass.—Brach v. Chief Justice of Dist. Court Dept., 386 Mass. 528, 437 N.E.2d 164 (1982).
N.Y.—New York City Housing Authority v. Medlin, 57 Misc. 2d 145, 291 N.Y.S.2d 672 (N.Y. City Civ. Ct. 1968).
Motives, reasoning, finding, and judgment
Where an action taken by the President of the United States is authorized by a statute on which the President relied, the President's motives, reasoning, finding of facts requiring action, and judgment are immune from judicial scrutiny.
U.S.—U. S. Cane Sugar Refiners' Ass'n v. Block, 683 F.2d 399 (C.C.P.A. 1982).

3 U.S.—Gennuso v. Commercial Bank & Trust Co., 566 F.2d 437 (3d Cir. 1977).
Cal.—Desert Environment Conservation Assn. v. Public Utilities Com., 8 Cal. 3d 739, 106 Cal. Rptr. 31, 505 P.2d 223 (1973).
N.Y.—Betzler v. New York State Civil Service Commission, 78 Misc. 2d 530, 357 N.Y.S.2d 619 (Sup 1974).
Or.—Mary's Fine Food, Inc. v. Oregon Liquor Control Commission, 30 Or. App. 435, 567 P.2d 146 (1977).
As to inherent powers of the courts, generally, see § 387.
Domain entrusted to administrative agency by Congress
An appellate court may not intrude upon the domain which Congress has exclusively entrusted to an administrative agency.
U.S.—I.N.S. v. Orlando Ventura, 537 U.S. 12, 123 S. Ct. 353, 154 L. Ed. 2d 272 (2002).
Inherent authority exceeded
The chief judge of a court exceeded his inherent authority in ordering the board of county commissioners to pay for increased security measures at the courthouse.
Colo.—Board of County Com'rs of Weld County v. Nineteenth Judicial Dist., 895 P.2d 545 (Colo. 1995).

4 U.S.—Harmon v. Brucker, 355 U.S. 579, 78 S. Ct. 433, 2 L. Ed. 2d 503 (1958); Michigan Head Start Directors Ass'n v. Butz, 397 F. Supp. 1124 (W.D. Mich. 1975); U.S. v. Hossbach, 518 F. Supp. 759 (E.D. Pa. 1980).
N.Y.—Lawyers Co-op. Pub. Co. v. Flavin, 69 Misc. 2d 493, 331 N.Y.S.2d 159 (Sup 1971), judgment aff'd, 39 A.D.2d 616, 332 N.Y.S.2d 616 (3d Dep't 1972).

5 U.S.—Utah Ass'n of Counties v. Bush, 316 F. Supp. 2d 1172, 11 A.L.R. Fed. 2d 917 (D. Utah 2004).

End of Document

16 C.J.S. Constitutional Law § 432

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

4. Encroachment on, or Interference with, Executive Branch of Government

§ 432. Interference with statutory duties—Administrative activities

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2541

The judicial department of the government generally may interfere with administrative activities of the Executive Branch only when necessary to protect individual constitutional rights, but the judiciary has the power to establish the limit of statutory grants of authority to administrative agencies and to determine whether such agencies have complied with statutory mandates.

Judicial review of the actions of an administrative agency is restricted primarily because of the fundamental doctrine of separation of powers.[1] The Judicial Branch may interfere with administrative activities of the Executive Branch only when necessary to protect individual constitutional rights[2] or where a statute has imposed a specific duty on the courts with respect to such activities.[3] It is not the proper function of federal courts to dictate to executive administrative agencies what policies will best serve the public interest.[4] However, the judiciary has the power to establish the limit of statutory grants of authority to administrative agencies[5] or to determine whether an administrative agency has properly performed its legislatively delegated function.[6]

In the collaboration of judicial power and function with administrative process, the courts must conscientiously guard against any instinct of overprotectiveness, which may unwarrantedly impede proper administrative effort or result.[7] Furthermore, in their desire to give full, facilitating cooperation to the exercise of authorized administrative powers and duties, the courts must not sweep aside the fundamental and inherent concept that a judicial responsibility is owing for any judicial function that they are called on to perform.[8]

A court may not assume in advance that an administrative hearing may not be fairly conducted.[9] Where the act of an administrative board is discriminatory, the court may not exercise administrative functions to save it from inoperativeness.[10]

Quasi-judicial determinations.

As part of the Executive Branch of government, quasi-judicial agencies should be afforded the ability to perform their administrative and adjudicative functions free from excessive interference by the judiciary.[11] However, the courts possess inherent authority to guard the integrity of judicial proceedings by sanctioning egregious conduct of litigants, and in determining whether this latter power can be invoked to impose sanctions against the state and its agencies, the courts must be particularly circumspect as this is one area in which the judiciary by necessity must render a final pronouncement.[12] Thus, even in the absence of a statutory right of review, the courts may review determinations by executive or administrative officers and boards where they act in a judicial or quasi-judicial capacity,[13] and the courts do not encroach on the discretion of administrative agencies by deciding purely legal questions relating to their discretionary acts.[14]

Agency's construction of statute.

An agency's interpretation of its governing statutes and constitutional provisions is entitled to great deference, and a reviewing court may not substitute its judgment for that of the agency.[15] Judicial deference to a federal agency's permissible construction of a statute, when Congress has not specifically addressed the question at issue, is justified because the responsibilities for assessing the wisdom of such policy choices and resolving the struggle between competing views of the public interest are not judicial ones and because of the agency's greater familiarity with the ever-changing facts and circumstances surrounding the subjects regulated.[16] However, while the courts will grant some deference to legal determinations that fall within the agency's expertise, it is the function of the courts to interpret the law, and when an agency addresses a question of law by construing or applying a particular statute, the courts are not bound by the agency's legal interpretation.[17]

Footnotes

1 Md.—Sadler v. Dimensions Healthcare Corp., 378 Md. 509, 836 A.2d 655 (2003).
As to the separation-of-powers doctrine, generally, see § 272.
Intrusion upon domain entrusted to agency by Congress
An appellate court may not intrude upon the domain which Congress has exclusively entrusted to an administrative agency.
U.S.—I.N.S. v. Orlando Ventura, 537 U.S. 12, 123 S. Ct. 353, 154 L. Ed. 2d 272 (2002).

2 U.S.—Burner v. Washington, 399 F. Supp. 44 (D.D.C. 1975).
Fla.—4245 Corp., Mother's Lounge, Inc. v. Division of Beverage, 348 So. 2d 934 (Fla. 1st DCA 1977).
Ill.—American Federation of State, County and Municipal Emp., AFL-CIO v. Walker, 27 Ill. App. 3d 883, 327 N.E.2d 568 (4th Dist. 1975).
Extent of judicial power
(1) Judicial power extends only to correction of an officer's failure to proceed according to the law where the constitutionality of the law authorizing the officer to act has been determined.

U.S.—Kleberg & Co. v. U.S., 71 F.2d 332 (C.C.P.A. 1933).

(2) A court, under the guise of protecting rights, may not substitute its idea of what is best for the persons whose rights purportedly are being protected.

Ill.—Dixon Ass'n for Retarded Citizens v. Thompson, 91 Ill. 2d 518, 64 Ill. Dec. 565, 440 N.E.2d 117 (1982).

Administration of statute

The purpose of interpretation is to define the terms of a statute, not to administer it in a given case.

Cal.—Anderson Union High Sch. Dist. v. Schreder, 56 Cal. App. 3d 453, 128 Cal. Rptr. 529 (3d Dist. 1976).

3 Fla.—4245 Corp., Mother's Lounge, Inc. v. Division of Beverage, 348 So. 2d 934 (Fla. 1st DCA 1977).

Ill.—Dixon Ass'n for Retarded Citizens v. Thompson, 91 Ill. 2d 518, 64 Ill. Dec. 565, 440 N.E.2d 117 (1982).

Mich.—Michigan Consolidated Gas Co. v. Michigan Public Service Commission, 389 Mich. 624, 209 N.W.2d 210 (1973).

Pa.—Application of Friday, 33 Pa. Commw. 256, 381 A.2d 504 (1978).

Interpreting scope of administrative agency's authority

In interpreting the scope of an administrative agency's authority to modify a regulatory scheme, the United States Supreme Court and the administrative agency are bound not only by Congress's ultimate purposes but also by the means that Congress has deemed appropriate, and prescribed, for the pursuit of those purposes.

U.S.—MCI Telecommunications Corp. v. American Tel. & Tel. Co., 512 U.S. 218, 114 S. Ct. 2223, 129 L. Ed. 2d 182 (1994).

Review of policymaking authority of agency

When Congress, through express delegation or introduction of an interpretative gap in the statutory structure, has delegated policymaking authority to an administrative agency, the extent of judicial review of the agency's policy determinations is limited.

U.S.—Pauley v. BethEnergy Mines, Inc., 501 U.S. 680, 111 S. Ct. 2524, 115 L. Ed. 2d 604 (1991).

4 U.S.—U.S. S.E.C. v. Citigroup Global Markets Inc., 673 F.3d 158 (2d Cir. 2012).

5 U.S.—Stark v. Wickard, 321 U.S. 288, 64 S. Ct. 559, 88 L. Ed. 733 (1944); Garvey v. Freeman, 397 F.2d 600 (10th Cir. 1968).

N.J.—Essential Sav. & Loan Ass'n v. Howell, 105 N.J. Super. 424, 252 A.2d 740 (App. Div. 1969).

6 N.Y.—Bartlett v. Morgan, 42 A.D.2d 435, 348 N.Y.S.2d 418 (4th Dep't 1973).

Wis.—Outagamie County v. Smith, 38 Wis. 2d 24, 155 N.W.2d 639 (1968).

7 U.S.—Walling v. Benson, 137 F.2d 501, 149 A.L.R. 186 (C.C.A. 8th Cir. 1943).

N.Y.—Application of Little, 44 N.Y.S.2d 456 (Sup 1943).

Minimum interference

Ind.—Public Service Commission v. Indiana Bell Telephone Co., 232 Ind. 332, 112 N.E.2d 751 (1953).

8 U.S.—Walling v. Benson, 137 F.2d 501, 149 A.L.R. 186 (C.C.A. 8th Cir. 1943).

N.Y.—Hamilton v. Brennan, 203 Misc. 536, 119 N.Y.S.2d 83 (Sup 1953).

9 U.S.—Fahey v. Mallonee, 332 U.S. 245, 67 S. Ct. 1552, 91 L. Ed. 2030 (1947).

10 U.S.—Mendez v. Westminister School Dist. of Orange County, 64 F. Supp. 544 (S.D. Cal. 1946), judgment aff'd, 161 F.2d 774 (C.C.A. 9th Cir. 1947).

11 Pa.—McCann v. Unemployment Compensation Bd. of Review, 562 Pa. 393, 756 A.2d 1 (2000).

12 Pa.—McCann v. Unemployment Compensation Bd. of Review, 562 Pa. 393, 756 A.2d 1 (2000).

As to the inherent power of the courts, generally, see § 387.

13 Ala.—Parsons v. State, 251 Ala. 467, 38 So. 2d 209 (1948).

Ky.—Kendall v. Beiling, 295 Ky. 782, 175 S.W.2d 489 (1943).

R.I.—Weeks v. Personnel Bd. of Review of Town of North Kingstown, 118 R.I. 243, 373 A.2d 176 (1977).

Declared policy

A policy declared by an administrative agency is subject to scrutiny by the courts and may not contravene constitutional limitations.

Pa.—Aizen v. Pennsylvania Public Utility Commission, 163 Pa. Super. 305, 60 A.2d 443 (1948).

14 U.S.—City of Philadelphia v. Klutznick, 503 F. Supp. 663 (E.D. Pa. 1980).

N.Y.—Haydon v. Proskauer, 281 A.D. 483, 120 N.Y.S.2d 322 (1st Dep't 1953).

As to the general prohibition against interference by the courts with the exercise of discretion by the Executive Branch of government, see § 433.

15 Colo.—Table Services, LTD v. Hickenlooper, 257 P.3d 1210 (Colo. App. 2011).

16 U.S.—Food and Drug Admin. v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 120 S. Ct. 1291, 146 L. Ed. 2d 121 (2000).

17 N.M.—Chavez v. Mountain States Constructors, 1996-NMSC-070, 122 N.M. 579, 929 P.2d 971 (1996).

End of Document

16 C.J.S. Constitutional Law § 433

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

4. Encroachment on, or Interference with, Executive Branch of Government

§ 433. Substitution of, or interference with, discretion

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2540

In the absence of clear evidence of a failure to exercise legal discretion, or an abuse of discretion, or a clear violation of a constitutional or statutory mandate, a court may not substitute its discretion or notion of expediency and fairness for that of executive or administrative officers, boards, and commissions.

In the absence of clear evidence of a failure to exercise legal discretion,[1] or an abuse of discretion,[2] or clear violation of a constitutional or statutory mandate,[3] a court may not substitute its discretion or notion of expediency and fairness for that of executive or administrative officers, boards, and commissions.[4] Nor may a court interfere with, or control, such officers or bodies in the exercise of any power or the performance of any duty of an executive or administrative character, in which a constitutional provision contemplates the exercise of discretion.[5]

The foregoing rules pertain to numerous matters, including the rendition of orders of various kinds and for a variety of purposes,[6] matters of procedure,[7] promulgation of rules[8] and regulations,[9] making rates,[10] and classifications,[11] determining facts,[12] enforcing judgments,[13] or issuing extradition warrants.[14]

The general principle that the courts may not interfere with the exercise of discretion by the Executive Branch of government also may be applied to a private party, such as a government contractor, exercising authority delegated to it by the Executive Branch.[15] Thus, for example, a court cannot review a federal government contractor's action in denying an employee of the contractor access to a secured work area, in which Air Force One planes for use by the President of the United States were being constructed, since the decision represented an exercise of authority delegated by the Executive Branch of the federal government and was entitled to appropriate deference by the federal courts.[16]

CUMULATIVE SUPPLEMENT

Cases:

Under special factors analysis, whether to permit damages claims challenging confinement conditions imposed on aliens detained for immigration violations pursuant to a high-level executive policy created in the wake of the September 11, 2001 terrorist attacks was decision for Congress, not the courts, and thus such claims could not be basis for *Bivens* action against federal executive officials; allowing a damages suit would require courts to interfere with sensitive functions of the Executive Branch and require inquiry into sensitive issues of national security, and alternative methods of relief, including habeas corpus, were available. Ziglar v. Abbasi, 2017 WL 2621317 (U.S. 2017).

[END OF SUPPLEMENT]

Footnotes

1 Cal.—People v. Horton, 264 Cal. App. 2d 192, 70 Cal. Rptr. 186 (4th Dist. 1968).
Ohio—State ex rel. Ellis v. Sherrill, 136 Ohio St. 328, 16 Ohio Op. 464, 25 N.E.2d 844 (1940).
Utah—Murphy v. Grand County, 1 Utah 2d 412, 268 P.2d 677 (1954).

2 Cal.—People v. Horton, 264 Cal. App. 2d 192, 70 Cal. Rptr. 186 (4th Dist. 1968).

3 U.S.—Seafarers Intern. Union of North America, AFL-CIO v. Weinberger, 363 F. Supp. 1053 (D.D.C. 1973).
Alaska—Jackson v. State, 127 P.3d 835 (Alaska Ct. App. 2006), as amended, (Feb. 6, 2006).
Fla.—Florida Dept. of Children and Families v. J.B., 154 So. 3d 479 (Fla. 3d DCA 2015).
Mass.—Attorney General v. Sheriff of Worcester County, 382 Mass. 57, 413 N.E.2d 722 (1980).
N.J.—In re Ringwood Fact Finding Committee, 65 N.J. 512, 324 A.2d 1 (1974).
As to the prohibition against interference by the courts with the exercise of statutory duties by the Executive Branch, see § 431.

4 U.S.—Kleindienst v. Mandel, 408 U.S. 753, 92 S. Ct. 2576, 33 L. Ed. 2d 683 (1972); In re Daley, 549 F.2d 469 (7th Cir. 1977); Canadian Transport Co. v. U.S., 663 F.2d 1081 (D.C. Cir. 1980).
N.J.—Edelstein v. Ferrell, 120 N.J. Super. 583, 295 A.2d 390 (Law Div. 1972).
N.Y.—Lorie C. v. St. Lawrence County Dept. of Social Services, 49 N.Y.2d 161, 424 N.Y.S.2d 395, 400 N.E.2d 336 (1980).
Reason for executive action
The Judicial Branch of government may not invade the province of the executive to inquire into reasons behind executive action.
U.S.—Breen v. Housing Authority of City of Pittsburgh, 119 F. Supp. 320 (W.D. Pa. 1954).
Election campaign
Prudential considerations barred consideration of a suit by supporters of a candidate's campaign for a party's presidential nomination, alleging that members of the incumbent President's administration and his reelection committee had illegally employed their public authority and expended federal funds to promote the incumbent's renomination, since the requested relief would bring the court and Executive Branch into

conflict and involve the court in evaluating every executive discretionary consideration for traces of political expediency.

U.S.—Winpisinger v. Watson, 628 F.2d 133 (D.C. Cir. 1980).

Decision not subject to judicial review

A Department of Defense decision to administer unapproved drugs to service members without their consent, in order to protect troops from the threat of chemical or biological attack in connection with a military operation, was not subject to judicial review.

U.S.—Doe v. Sullivan, 756 F. Supp. 12 (D.D.C. 1991), aff'd, 938 F.2d 1370 (D.C. Cir. 1991).

5 U.S.—Aircraft & Diesel Equipment Corp. v. Hirsch, 331 U.S. 752, 67 S. Ct. 1493, 91 L. Ed. 1796 (1947); Stein v. Department of Justice and Federal Bureau of Investigation, 662 F.2d 1245 (7th Cir. 1981); Dannhausen v. First Nat. Bank of Sturgeon Bay, 538 F. Supp. 551 (E.D. Wis. 1982).

Ark.—Arkansas State Highway Commission v. White Advertising Intern., 273 Ark. 364, 620 S.W.2d 280 (1981).

Ill.—Dixon Ass'n for Retarded Citizens v. Thompson, 91 Ill. 2d 518, 64 Ill. Dec. 565, 440 N.E.2d 117 (1982).

N.Y.—Board of Educ., East Irondequoit Central School Dist. v. Doe, 88 A.D.2d 108, 452 N.Y.S.2d 964 (4th Dep't 1982).

N.C.—Orange County v. North Carolina Dept. of Transp., 46 N.C. App. 350, 265 S.E.2d 890 (1980).

W. Va.—E. H. v. Matin, 168 W. Va. 248, 284 S.E.2d 232 (1981).

Matters of public welfare

The policy that an officer to whom public duties are confided by law is not subject to control by the courts in the exercise of his or her judgment and discretion is particularly persuasive when matters of public welfare are at stake.

U.S.—Preferred Risk Mut. Ins. Co. v. Manchester Ins. & Indem. Co., 467 F.2d 1230 (7th Cir. 1972).

Issuance of licenses

(1) It is not an appropriate function of a court to act as a licensing agency.

Colo.—Kourlis v. District Court, El Paso County, 930 P.2d 1329 (Colo. 1997).

(2) It is not the constitutional province of the judiciary to determine whether licenses should be issued by the Executive Branch of government or one of its administrative agencies.

Wash.—Creelman v. State Bd. of Registration for Architects, 73 Wash. 2d 298, 438 P.2d 215 (1968).

Discretion of President

The grant of discretion to the President of the United States to make particular judgments forecloses judicial review of the substance of those judgments altogether, but a court may ensure that the President was, in fact, exercising the authority conferred by the act at issue.

U.S.—Utah Ass'n of Counties v. Bush, 316 F. Supp. 2d 1172, 11 A.L.R. Fed. 2d 917 (D. Utah 2004).

6 U.S.—Shaughnessy v. United States ex rel. Mezei, 345 U.S. 206, 73 S. Ct. 625, 97 L. Ed. 956 (1953).

N.J.—In re Ringwood Fact Finding Committee, 65 N.J. 512, 324 A.2d 1 (1974).

Tex.—Fire Dept. of City of Fort Worth v. City of Fort Worth, 147 Tex. 505, 217 S.W.2d 664 (1949).

Immunity order

U.S.—In re Corrugated Container Anti-Trust Litigation, 620 F.2d 1086, 29 Fed. R. Serv. 2d 1108 (5th Cir. 1980); In re Daley, 549 F.2d 469 (7th Cir. 1977).

Executive order

An executive order is not subject to review as to its expediency, desirability, and policy.

U.S.—Washington v. Clark, 84 F. Supp. 964 (D. D.C. 1949), judgment aff'd, 182 F.2d 375 (D.C. Cir. 1950), judgment aff'd, 341 U.S. 923, 71 S. Ct. 795, 95 L. Ed. 1356 (1951).

7 U.S.—Federal Communications Commission v. WJR, The Goodwill Station, 337 U.S. 265, 69 S. Ct. 1097, 93 L. Ed. 1353 (1949); United Steelworkers of America, AFL-CIO-CLC v. Marshall, 647 F.2d 1189 (D.C. Cir. 1980).

Grievance procedures

U.S.—Jablon v. Trustees of California State Colleges, 482 F.2d 997 (9th Cir. 1973).

8 U.S.—Bingler v. Johnson, 394 U.S. 741, 89 S. Ct. 1439, 22 L. Ed. 2d 695 (1969).

Ill.—People ex rel. Jones v. Brantley, 45 Ill. 2d 335, 259 N.E.2d 33 (1970).

Mass.—Colella v. State Racing Commission, 360 Mass. 152, 274 N.E.2d 331 (1971).

9 U.S.—McCulloch Gas Processing Corp. v. Department of Energy, 650 F.2d 1216 (Temp. Emer. Ct. App. 1981); Bingler v. Johnson, 394 U.S. 741, 89 S. Ct. 1439, 22 L. Ed. 2d 695 (1969).

Ill.—Miller v. Illinois Dept. of Public Aid, 94 Ill. App. 3d 11, 49 Ill. Dec. 534, 418 N.E.2d 178 (1st Dist. 1981).

Mass.—Attorney General v. Sheriff of Worcester County, 382 Mass. 57, 413 N.E.2d 722 (1980).

Scope of judicial review

In reviewing a regulation subject to constitutional challenge, a court cannot substitute its judgment as to the need for the regulation, or the propriety of the means chosen to implement statutory goals, so long as the regulation is rationally related to those goals.

Mass.—Cacicio v. Secretary of Public Safety, 422 Mass. 764, 665 N.E.2d 85 (1996).

Agency's view

Respect is owing to an agency's own view that its regulation is within an empowering statute.

Mass.—White Dove, Inc. v. Director of Division of Marine Fisheries, 380 Mass. 471, 403 N.E.2d 1169 (1980).

Internal Revenue

The role of the judiciary in cases involving regulations of the Commissioner of Internal Revenue begins and ends with assuring that the regulations fall within the authority of the Commissioner to implement the congressional mandate in some reasonable manner.

U.S.—U.S. v. Correll, 389 U.S. 299, 88 S. Ct. 445, 19 L. Ed. 2d 537 (1967); Schudel v. C. I. R., 563 F.2d 1300 (9th Cir. 1977).

10 Mass.—Zussman v. Rent Control Bd. of Brookline, 4 Mass. App. Ct. 135, 343 N.E.2d 889 (1976).

Mich.—Michigan Consol. Gas v. Michigan Public Service Comm., 99 Mich. App. 470, 297 N.W.2d 874 (1980).

Miss.—Mississippi Public Service Commission v. Mississippi Power Co., 366 So. 2d 656 (Miss. 1979).

Ratemaking not judicial function

(1) Ratemaking is a legislative or administrative, not a judicial, function.

Kan.—Mitchell v. City of Wichita, 270 Kan. 56, 12 P.3d 402 (2000).

(2) The Judicial Branch is not empowered to fix utility rates.

Wash.—US West Communications, Inc. v. Washington Utilities and Transp. Com'n, 134 Wash. 2d 48, 949 P.2d 1321 (1997).

11 Ark.—Tri State Ins. Co. v. Employers Mut. Liability Ins. Co., 254 Ark. 944, 497 S.W.2d 39 (1973).

N.J.—Carls v. Civil Service Commission, 17 N.J. 215, 111 A.2d 45 (1955).

12 U.S.—U.S. v. George S. Bush & Co., Inc., 310 U.S. 371, 60 S. Ct. 944, 84 L. Ed. 1259 (1940).

Alaska—Granato v. Occhipinti, 602 P.2d 442 (Alaska 1979).

13 Ohio—Long & Allstatter Co. v. Willis, 52 Ohio App. 299, 6 Ohio Op. 360, 21 Ohio L. Abs. 554, 3 N.E.2d 910 (1st Dist. Hamilton County 1935).

14 U.S.—Sindona v. Grant, 619 F.2d 167 (2d Cir. 1980); Escobedo v. U.S., 623 F.2d 1098 (5th Cir. 1980).

Cal.—State of South Dakota v. Brown, 20 Cal. 3d 765, 144 Cal. Rptr. 758, 576 P.2d 473 (1978).

Colo.—Whittington v. Bray, 200 Colo. 17, 612 P.2d 72 (1980).

As to encroachment by the courts in criminal matters within the discretion of the executive, generally, see § 437.

15 U.S.—Beattie v. Boeing Co., 43 F.3d 559 (10th Cir. 1994).

16 U.S.—Beattie v. Boeing Co., 43 F.3d 559 (10th Cir. 1994).

End of Document

16 C.J.S. Constitutional Law § 434

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

§ 434. Judiciary's interference with Office of Governor

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2543

In preserving the separation of power between the various departments of the government, the courts will not interfere with the governor of a state in the constitutional exercise of the governor's discretionary executive powers and duties.

The governor, as the chief executive officer of a state, is vested with the largest measure of executive discretion in the exercise of which the governor may not be controlled by the courts.[1] Thus, the discretion of the governor is absolute and free from judicial control when making a variety of determinations under constitutional authority,[2] such as determining whether an occasion exists for an extra session of the legislature,[3] or calling out the militia,[4] or declaring the existence of an emergency such as to give immediate effect to a statute.[5]

However, when a governor's acts exceed the authority given him or her by the state constitution and statutes and are injurious to the rights of citizens, they are open to inquiry and control by the courts.[6] Furthermore, the rules against judicial control of a governor's acts do not prevent the courts from reviewing the governor's decisions or determinations which are essentially judicial in character.[7]

Reinstatement of officer.

The courts may not inquire into the factual basis for reinstatement of an officer previously suspended by the governor, any more than the courts may inquire as to the sufficiency of the evidence for suspension.[8]

Footnotes

1 Cal.—State of South Dakota v. Brown, 20 Cal. 3d 765, 144 Cal. Rptr. 758, 576 P.2d 473 (1978).
Colo.—Steinman v. Caldwell, 628 P.2d 110 (Colo. 1981).
Md.—Maryland Action for Foster Children, Inc. v. State, 279 Md. 133, 367 A.2d 491 (1977).
N.Y.—Finger Lakes Racing Association, Inc. v. New York State Off-Track Parimutuel Betting Commission, 30 N.Y.2d 207, 331 N.Y.S.2d 625, 282 N.E.2d 592 (1972).
Utah—State in Interest of Prisbrey, 576 P.2d 1278 (Utah 1978).
W. Va.—State ex rel. Bache & Co. v. Gainer, 154 W. Va. 499, 177 S.E.2d 10 (1970).
Discretion respecting official duties
Because the office of governor of a state is political, the discretion vested in the chief executive by the constitution and laws of the state respecting his or her official duties is not subject to control or review by the courts.
U.S.—Mitchell v. King, 537 F.2d 385 (10th Cir. 1976).
Mich.—Rutledge v. Preadmore, 21 Mich. App. 726, 176 N.W.2d 417 (1970).
Specific legislation
The courts may not order the governor to sign or not to sign legislation.
Cal.—Serrano v. Priest, 18 Cal. 3d 728, 135 Cal. Rptr. 345, 557 P.2d 929 (1976), opinion supplemented on other grounds, 20 Cal. 3d 25, 141 Cal. Rptr. 315, 569 P.2d 1303 (1977) (rejected on other grounds by, Blue Sky Advocates v. State, 107 Wash. 2d 112, 727 P.2d 644 (1986)).

2 Pa.—Robinson v. Shapp, 23 Pa. Commw. 153, 350 A.2d 464 (1976), decree aff'd by, 473 Pa. 315, 374 A.2d 533 (1977).
S.C.—Hearon v. Calus, 178 S.C. 381, 183 S.E. 13 (1935).
Utah—Chez ex rel. Weber College v. Utah State Bldg. Commission, 93 Utah 538, 74 P.2d 687 (1937).
Approval or disapproval of appropriation
N.J.—Smith v. Goldman, 159 N.J. Super. 297, 387 A.2d 1239 (App. Div. 1978), judgment aff'd, 82 N.J. 133, 411 A.2d 462 (1980).
Exercise of veto power
(1) The governor of the state is not beyond judicial review in the exercise of veto powers.
Miss.—Fordice v. Bryan, 651 So. 2d 998 (Miss. 1995).
(2) A governor's overall statement of intent to reduce the budget and return money to the taxpayers was a sufficient reason for his veto of particular parts of a section of an appropriations bill, and the state supreme court would not question the sufficiency, rationality, or validity of the reason for the veto.
S.C.—South Carolina Coin Operators Ass'n v. Beasley, 320 S.C. 183, 464 S.E.2d 103 (1995).
(3) Although the legislature has reluctantly exercised the power to override a veto in the past, the supreme court of a state should be loathe to limit a governor's line-item veto power when that constitutional remedy is available to the legislature.
Wash.—Washington State Legislature v. Lowry, 131 Wash. 2d 309, 931 P.2d 885 (1997).
Death penalty matters
Under the separation-of-powers doctrine, the supreme court of the state did not have the power to interfere with the governor's policy concerning the signing of death warrants.
Ky.—Bowling v. Com., 926 S.W.2d 667 (Ky. 1996), as modified on reh'g, (95-SC-1018) (Mar. 21, 1996).
Review of performance of ministerial duty
A governor's appointment to fill a vacancy on a county school board was a ministerial duty subject to review by the state supreme court, and any such review did not violate the separation-of-powers clause.

S.C.—Fowler v. Beasley, 322 S.C. 463, 472 S.E.2d 630 (1996).

3 U.S.—Utah Power & Light Co. v. Pfost, 52 F.2d 226 (D. Idaho 1931).

Idaho—Diefendorf v. Gallet, 51 Idaho 619, 10 P.2d 307 (1932).

4 U.S.—Cox v. McNutt, 12 F. Supp. 355 (S.D. Ind. 1935).

Ky.—Begley v. Louisville Times Co., 272 Ky. 805, 115 S.W.2d 345 (1938).

Presumption of necessity

When acting within the power vested in him or her, the governor is the sole judge of the facts that may seem to demand the aid and assistance of the military forces of the state, there being a presumption that he or she will not exercise such power unless it becomes necessary.

N.M.—State ex rel. Charlton v. French, 1940-NMSC-010, 44 N.M. 169, 99 P.2d 715 (1940).

5 Ky.—Commonwealth ex rel. Meredith v. Johnson, 292 Ky. 288, 166 S.W.2d 409 (1942).

Mass.—Prescott v. Secretary of Commonwealth, 299 Mass. 191, 12 N.E.2d 462 (1938).

Okla.—Cope v. Childers, 1946 OK 173, 197 Okla. 176, 170 P.2d 210 (1946).

6 Utah—Taylor v. Lee, 119 Utah 302, 226 P.2d 531 (1951).

W. Va.—State ex rel. Karnes v. Dadisman, 153 W. Va. 771, 172 S.E.2d 561 (1970).

Wis.—Outagamie County v. Smith, 38 Wis. 2d 24, 155 N.W.2d 639 (1968).

Exercise of veto power

The manner in which the governor exercises the power of veto is not beyond judicial review or judicial control if the manner in which it is exercised is beyond the governor's constitutional authority.

N.M.—State ex rel. Sego v. Kirkpatrick, 1974-NMSC-059, 86 N.M. 359, 524 P.2d 975 (1974).

Removal of highway commissioners

State highway commissioners charged by the governor with declining to vacate their offices at the governor's order were entitled to have the question thus made by the governor decided by the courts, and thus, the governor's attempting to substitute other commissioners, and calling out the militia and proclaiming the existence of an insurrection in connection with the highway department, was unauthorized.

S.C.—Hearon v. Calus, 178 S.C. 381, 183 S.E. 13 (1935).

7 W. Va.—State ex rel. Karnes v. Dadisman, 153 W. Va. 771, 172 S.E.2d 561 (1970).

Rule requiring resignation of judges to run for elective office

A provision of a judicial code of conduct stating that a judge must resign to run for any elective office is not tantamount to removal from office and does not usurp the authority of the legislature and the governor to remove judicial officers; the provision only requires a sitting judge to choose between a candidacy and the bench.

Me.—In re Dunleavy, 2003 ME 124, 838 A.2d 338 (Me. 2003).

8 Fla.—State ex rel. Kelly v. Sullivan, 52 So. 2d 422 (Fla. 1951).

End of Document

16 C.J.S. Constitutional Law § 435

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

4. Encroachment on, or Interference with, Executive Branch of Government

§ 435. Judiciary's interference with Office of Governor—Granting reprieves and pardons

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2543

Courts generally cannot interfere with the authority vested in governors with respect to granting reprieves and pardons.

The authority vested in governors to pardon or reprieve,[1] or commute sentences,[2] or to grant[3] or revoke[4] paroles, generally is not subject to judicial revision or control. However, a court may set aside a pardon obtained by fraud.[5]

Footnotes

1 Miss.—Pope v. Wiggins, 220 Miss. 1, 69 So. 2d 913 (1954).
Or.—Eacret v. Holmes, 215 Or. 121, 333 P.2d 741 (1958).
Tenn.—Collins v. State, 550 S.W.2d 643 (Tenn. 1977).
Pardoning power not invaded
Wash.—State v. Cullen, 14 Wash. 2d 105, 127 P.2d 257 (1942).
Reasons or motives
The motives or reasons of a governor in granting a pardon or reprieve may not be inquired into by the courts.

Kan.—Jamison v. Flanner, 116 Kan. 624, 228 P. 82, 35 A.L.R. 973 (1924).
S.C.—State v. Harrison, 122 S.C. 523, 115 S.E. 746 (1923).

2 Mich.—People v. Freleigh, 334 Mich. 306, 54 N.W.2d 599 (1952).
Or.—Eacret v. Holmes, 215 Or. 121, 333 P.2d 741 (1958).
Tenn.—Collins v. State, 550 S.W.2d 643 (Tenn. 1977).

Change of validly imposed sentence

The trial court has limited authority to change a validly imposed sentence since to do so would infringe on the exclusive power of governor under the state constitution to commute sentence.

Mich.—People v. Gross, 118 Mich. App. 161, 324 N.W.2d 557 (1982).

3 Ky.—Jackson v. Rose, 223 Ky. 285, 3 S.W.2d 641 (1928).
Mo.—Lime v. Blagg, 345 Mo. 1, 131 S.W.2d 583 (1939).

Exercise of power to grant commutation

The exercise of the governor's discretion and power to grant commutations is not subject to judicial review or to an examination to determine whether he or she acted under a statute or otherwise unless illegal or impossible conditions are attached.

N.Y.—Vanilla v. Moran, 272 A.D. 859, 70 N.Y.S.2d 631 (3d Dep't 1947), judgment aff'd, 298 N.Y. 796, 83 N.E.2d 696 (1949).

4 N.Y.—Vanilla v. Moran, 188 Misc. 325, 67 N.Y.S.2d 833 (Sup 1947), judgment aff'd, 272 A.D. 859, 70 N.Y.S.2d 631 (3d Dep't 1947), judgment aff'd, 298 N.Y. 796, 83 N.E.2d 696 (1949).
Okla.—Ex parte Edwards, 78 Okla. Crim. 213, 146 P.2d 311 (1944).

Conditional pardon

A court is without jurisdiction to review a governor's action in ordering a conditionally pardoned convict to be taken into custody to serve out the remainder of a term for breach of a condition of pardon.

Tenn.—State ex rel. Rowe v. Connors, 166 Tenn. 393, 61 S.W.2d 471 (1933).

As to the general prohibition against encroachment by the courts on the powers of the Executive Branch in criminal matters, see § 437.

5 Iowa—Rathbun v. Baumel, 196 Iowa 1233, 191 N.W. 297, 30 A.L.R. 216 (1922).
Kan.—Jamison v. Flanner, 116 Kan. 624, 228 P. 82, 35 A.L.R. 973 (1924).
Ky.—Adkins v. Com., 232 Ky. 312, 23 S.W.2d 277 (1929).

End of Document

16 C.J.S. Constitutional Law § 436

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

4. Encroachment on, or Interference with, Executive Branch of Government

§ 436. Foreign relations

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2551

The judiciary may not encroach on or usurp the executive function in conducting foreign relations.

The judiciary may not encroach on or usurp the executive function in conducting foreign relations[1] as the President is the sole organ of the federal government in the field of international relations.[2] Furthermore, executive decisions as to military matters are not subject to judicial inquiry.[3] The courts should ordinarily exercise a large measure of self-restraint when asked to interpose the judicial will above that of the President of the United States, as regards military affairs, but the courts may not be required to abdicate their responsibility to decide cases and controversies merely because they arise in the military context.[4]

The negotiation of treaties is a matter solely within the discretion of the President, and the courts should be hesitant to interfere in any way with the wording or intent of treaties.[5] Only in cases where the chief executive has clearly violated a provision of the federal constitution and denied a United States citizen his or her rights should a court seek to interfere with the treaty-making power of the President.[6]

CUMULATIVE SUPPLEMENT

Cases:

The narrow standard of judicial review, when the Executive, on the basis of a facially legitimate and bona fide reason, negatively exercises delegated power to admit or exclude foreign nationals, has particular force in admission and immigration cases that overlap with the area of national security, because judicial inquiry into the national-security realm raises concerns for the separation of powers by intruding on the President's constitutional responsibilities in the area of foreign affairs, and when it comes to collecting evidence and drawing inferences on questions of national security, the lack of competence on the part of the courts is marked. Trump v. Hawaii, 138 S. Ct. 2392 (2018).

Action by Congress and the President in the realm of foreign policy warrants respectful review by courts. Bank Markazi v. Peterson, 136 S. Ct. 1310 (2016).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—National City Bank of New York v. Republic of China, 348 U.S. 356, 75 S. Ct. 423, 99 L. Ed. 389 (1955); Electronic Data Systems Corp. Iran v. Social Sec. Organization of Government of Iran, 651 F.2d 1007 (5th Cir. 1981).

Md.—Traore v. State, 290 Md. 585, 431 A.2d 96 (1981).

N.Y.—Abdul-Haq v. Pakistan Intern. Airlines, 101 Misc. 2d 213, 420 N.Y.S.2d 848 (Sup 1979).

Access to courts

Only governments recognized by the United States and which are at peace with us are entitled to access to our courts, and it is within the exclusive power of the Executive Branch to determine which nations are entitled to sue.

U.S.—Pfizer, Inc. v. Government of India, 434 U.S. 308, 98 S. Ct. 584, 54 L. Ed. 2d 563 (1978).

International convention rules

Compliance with international convention rules is a matter for the executive department and may not be interfered with by the judiciary department.

U.S.—Federal Trade Commission v. A.P.W. Paper Co., 328 U.S. 193, 66 S. Ct. 932, 90 L. Ed. 1165 (1946).

2 U.S.—Velvel v. Johnson, 287 F. Supp. 846 (D. Kan. 1968), judgment aff'd, 415 F.2d 236 (10th Cir. 1969); Guerra v. Guajardo, 466 F. Supp. 1046 (S.D. Tex. 1978), aff'd, 597 F.2d 769 (5th Cir. 1979).

Customary policy of deference

(1) The United States Supreme Court has a customary policy of deference to the President in matters of foreign affairs.

U.S.—Jama v. Immigration and Customs Enforcement, 543 U.S. 335, 125 S. Ct. 694, 160 L. Ed. 2d 708, 2 A.L.R. Fed. 2d 675 (2005).

(2) Deeply rooted constitutional separation-of-powers principles impel a reluctance in the judiciary to interfere with or embarrass the executive in its constitutional role as the nation's primary organ of international policy.

U.S.—Spectrum Stores, Inc. v. Citgo Petroleum Corp., 632 F.3d 938 (5th Cir. 2011).

Appointment of ambassador

The question of whether to appoint an ambassador is one vested solely in the Executive Branch and does not present an issue for review by the courts.

U.S.—Phelps v. Reagan, 812 F.2d 1293 (10th Cir. 1987).

3 U.S.—Del Corso v. Krause, 435 U.S. 924, 98 S. Ct. 1488, 55 L. Ed. 2d 517 (1978); U.S. v. Hogans, 369 F.2d 359 (2d Cir. 1966); U.S. v. Valentine, 288 F. Supp. 957 (D.P.R. 1968).

Deployment of troops

The resolution of the question of whether the President's deployment of troops violated the war powers resolution and various provisions of the United States Constitution would require the Judicial Branch to intrude impermissibly into the realm of executive and legislative authority, and thus, the district court would not exercise its jurisdiction over a National Guard sergeant's action challenging his deployment; resolution of the war powers dispute was within the responsible exercise of existing powers already belonging to the political branches.

U.S.—Ange v. Bush, 752 F. Supp. 509 (D.D.C. 1990).

Accordance with international law

The question of whether actions by the Executive Branch in utilizing the armed forces are in accordance with international law is one which necessarily must be left to the elected representatives of the people, not the judiciary, even if the government's actions are contrary to valid treaties to which the government is a signatory.

U.S.—U.S. v. Berrigan, 283 F. Supp. 336 (D. Md. 1968).

Branches not in opposition

The war in Vietnam is a product of jointly supportive actions of two branches of government to whom the congeries of war powers have been committed, and because branches are not in opposition, there is no necessity for the judiciary to determine boundaries.

U.S.—Com. of Mass. v. Laird, 451 F.2d 26 (1st Cir. 1971).

4 U.S.—Owens v. Brown, 455 F. Supp. 291, 56 A.L.R. Fed. 823 (D.D.C. 1978).

Case-by-case determination

Whether the deference due particular military determinations rises to the level of nonreviewability is a question that varies from case to case and turns on the degree to which specific determinations are laden with discretion and the likelihood that judicial resolution will involve the courts in an inappropriate degree of supervision over primary military activities.

U.S.—Owens v. Brown, 455 F. Supp. 291, 56 A.L.R. Fed. 823 (D.D.C. 1978).

5 U.S.—Smith v. Eagleton, 455 F. Supp. 403 (W.D. Mo. 1978); U.S. v. Domestic Fuel Corporation, 71 F.2d 424 (C.C.P.A. 1934); Aris Gloves, Inc. v. U. S., 190 Ct. Cl. 367, 420 F.2d 1386 (1970).

6 U.S.—Aris Gloves, Inc. v. U. S., 190 Ct. Cl. 367, 420 F.2d 1386 (1970).

End of Document

16 C.J.S. Constitutional Law § 437

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

§ 437. Criminal matters

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2545

Decisions pertaining to criminal prosecutions generally rest in the Executive Branch and may not be encroached upon by the judiciary.

Decisions pertaining to criminal prosecutions generally rest in the Executive Branch and may not be encroached upon by the judiciary.[1] The charging function of a criminal case is within the sole province of the Executive Branch, which includes the attorney general of the state and various district attorneys.[2] A district attorney, acting as the prosecutor, has the power to investigate and to determine who is to be prosecuted and what crimes are be charged.[3]

A prosecutor is not subject to judicial supervision in determining what charges to bring and how to draft accusatory pleadings.[4] The prosecutor generally has considerable discretion in the exercise of the charging function,[5] and the discretion of the prosecuting attorney as to whether or not to prosecute is generally not subject to judicial interference,[6] except in the narrow circumstances where it is necessary to do so in order to discharge the judicial function of interpreting and applying constitutional provisions.[7] Absent evidence of a selective or discriminatory prosecutorial intent, or abuse of prosecutorial discretion, the

judiciary normally is powerless to interfere with the prosecutor's charging authority.[8] However, where the decision to prosecute is so abusive of discretion as to encroach on constitutionally protected rights, the judiciary must protect against unconstitutional deprivations.[9] Furthermore, unless constitutional or other compelling reasons require otherwise, the courts abstain from setting policy for the performance of the prosecutorial function.[10]

CUMULATIVE SUPPLEMENT

Cases:

Few subjects are less adapted to judicial review than the exercise by the Executive of his discretion in deciding when and whether to institute criminal proceedings, or what precise charge shall be made, or whether to dismiss a proceeding once brought. United States v. HSBC Bank USA, N.A., 863 F.3d 125 (2d Cir. 2017).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—U.S. v. Northside Realty Associates, Inc., 620 F.2d 300 (5th Cir. 1980); In re Grand Jury Proceedings, 613 F.2d 501 (5th Cir. 1980).
Cal.—People v. Cimarusti, 81 Cal. App. 3d 314, 146 Cal. Rptr. 421 (4th Dist. 1978).
Ill.—People v. Henry, 20 Ill. App. 3d 73, 312 N.E.2d 719 (3d Dist. 1974).
Pa.—In re Frawley, 26 Pa. Commw. 517, 364 A.2d 748 (1976).
U.S. Attorneys
Under the separation of powers doctrine, courts are not to interfere with the free exercise of the discretionary powers of the attorneys of the United States in their control over criminal prosecutions.
U.S.—U.S. v. McIntosh, 704 F.3d 894 (11th Cir. 2013), cert. denied, 134 S. Ct. 470, 187 L. Ed. 2d 316 (2013).
Absence of statutory authorization
A sentencing judge lacked authority to suspend a defendant's driver's license in the absence of a statutory provision for court-ordered revocation.
Iowa—State v. Sinclair, 582 N.W.2d 762 (Iowa 1998).

2 Cal.—People v. Mikhail, 13 Cal. App. 4th 846, 16 Cal. Rptr. 2d 641 (4th Dist. 1993).

3 Colo.—People v. Sepulveda, 65 P.3d 1002 (Colo. 2003).
Del.—Anderson v. State, 21 A.3d 52 (Del. 2011).

4 Iowa—State v. Iowa Dist. Court for Johnson County, 568 N.W.2d 505 (Iowa 1997).
Determination of actual charges
The prosecution's authority to choose, for each particular case, the actual charges from among those potentially available is founded, among other things, on the principle of separation of powers and generally is not subject to supervision by the Judicial Branch.
Cal.—Manduley v. Superior Court, 27 Cal. 4th 537, 27 Cal. 4th 887a, 117 Cal. Rptr. 2d 168, 41 P.3d 3 (2002), as modified, (Apr. 17, 2002).
Amendment of charges
Amendment of the charges against a criminal defendant by the trial court acting on its own motion would violate the doctrine of separation of the powers which are assigned to the executive and judicial departments.
Wyo.—Britton v. State, 976 P.2d 669 (Wyo. 1999).

5 Minn.—State v. Cash, 558 N.W.2d 735 (Minn. 1997).

6 U.S.—U.S. v. Renfro, 620 F.2d 569 (6th Cir. 1980); U.S. v. Scott, 631 F.3d 401 (7th Cir. 2011), as amended, (Jan. 28, 2011); O'Connor v. State of Nev., 507 F. Supp. 546 (D. Nev. 1981), judgment aff'd, 686 F.2d 749 (9th Cir. 1982).
Ala.—Doster v. State, 72 So. 3d 50 (Ala. Crim. App. 2010).

Cal.—People v. Solis, 232 Cal. App. 4th 1108, 181 Cal. Rptr. 3d 877 (2d Dist. 2015).
Conn.—State v. Brundage, 148 Conn. App. 550, 87 A.3d 582 (2014), certification granted in part, 311 Conn. 943, 89 A.3d 351 (2014).
Del.—Anderson v. State, 21 A.3d 52 (Del. 2011).
Fla.—Barnett v. Antonacci, 122 So. 3d 400 (Fla. 4th DCA 2013), review denied, 139 So. 3d 884 (Fla. 2014).
Md.—Babbitt v. State, 294 Md. 134, 448 A.2d 930 (1982).
Mass.—Watson v. Walker, 447 Mass. 1014, 854 N.E.2d 1247 (2006).
Minn.—State v. Strok, 786 N.W.2d 297 (Minn. Ct. App. 2010).
Mont.—State v. Passmore, 2010 MT 34, 355 Mont. 187, 225 P.3d 1229 (2010).

Ordering prosecution of crime

A court cannot order the state to prosecute a crime.
Fla.—Burk v. Washington, 713 So. 2d 988 (Fla. 1998).

Prohibition required by separation-of-powers doctrine

Colo.—People v. Sepulveda, 65 P.3d 1002 (Colo. 2003).
Conn.—State v. Kinchen, 243 Conn. 690, 707 A.2d 1255 (1998).
Mich.—People v. Sierb, 456 Mich. 519, 581 N.W.2d 219 (1998).
Minn.—State v. Cash, 558 N.W.2d 735 (Minn. 1997).
Okla.—Woodward v. Morrissey, 1999 OK CR 43, 991 P.2d 1042 (Okla. Crim. App. 1999), as corrected, (Nov. 30, 1999).

Special prosecutor

A judge in effect became the prosecutor by overriding the judgment of the district attorney not to prosecute and by purporting to appoint a special prosecutor to supplant the district attorney and ordering the prosecution to proceed, and thus, the appointed special prosecutor became a deputy of the judge in attempting to press forward with the prosecution in violation of the doctrine of separation of powers.
Cal.—People v. Municipal Court, 27 Cal. App. 3d 193, 103 Cal. Rptr. 645, 66 A.L.R.3d 717 (2d Dist. 1972).

7 U.S.—U.S. v. Smith, 231 F.3d 800, 55 Fed. R. Evid. Serv. 1267 (11th Cir. 2000).

8 Minn.—State v. Krotzer, 548 N.W.2d 252 (Minn. 1996).
As to the inherent power of the courts, see § 387.

Intentional discrimination

A court's role in reviewing the prosecutorial discretion is tempered by the fact that the prosecuting attorney is a representative of the Executive Branch and is only answerable to a court for intentional discrimination based on an impermissible standard of selection.
U.S.—U. S. v. Picciurro, 408 F. Supp. 1055 (E.D. Wis. 1976).

Limitation on exercise of inherent power

A court's inherent judicial power to act in the furtherance of justice is to be exercised only when there are special circumstances, such as selective or discriminatory prosecutorial intent.
Minn.—State v. Mitchell, 577 N.W.2d 481 (Minn. 1998).

9 U.S.—U.S. v. Johnson, 577 F.2d 1304 (5th Cir. 1978); Menard v. Mitchell, 430 F.2d 486 (D.C. Cir. 1970).
Mich.—People v. Bolton, 112 Mich. App. 626, 317 N.W.2d 199 (1981).

10 Conn.—State v. Kinchen, 243 Conn. 690, 707 A.2d 1255 (1998).

Allocation of resources

The administration of justice does not confer authority on the state supreme court to allocate the resources available to law enforcement or to assess the relative priority of discrete charges in a given community, so as to preclude retrials following mistrials attributable to a jury deadlock.
Mich.—People v. Sierb, 456 Mich. 519, 581 N.W.2d 219 (1998).

End of Document

16 C.J.S. Constitutional Law § 438

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

4. Encroachment on, or Interference with, Executive Branch of Government

§ 438. Criminal matters—Criminal procedure

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2545

The Executive Branch has sole discretion to control various aspects of criminal procedure free from judicial interference.

The Executive Branch has sole discretion to control various aspects of criminal procedure free from judicial interference,[1] such as plea bargaining,[2] granting immunity from prosecution,[3] deciding whether a prosecution witness should be requested to submit to a polygraph examination,[4] and criminal investigations.[5] On the other hand, certain actions by the judiciary do not constitute encroachment upon the executive in this area,[6] such as the appointment of prosecuting attorneys,[7] or the disqualification of prosecutors in particular cases.[8]

Footnotes

1 U.S.—U.S. v. Carter, 493 F.2d 704 (2d Cir. 1974); Gordon v. Heimann, 514 F. Supp. 659 (N.D. Ga. 1980); U.S. v. Linton, 502 F. Supp. 861 (D. Nev. 1980).

2 Cal.—People v. Superior Court (Felmann), 59 Cal. App. 3d 270, 130 Cal. Rptr. 548 (2d Dist. 1976).
Mich.—People v. Christian, 68 Mich. App. 480, 242 N.W.2d 813 (1976).
N.Y.—People v. Venable, 46 A.D.2d 73, 361 N.Y.S.2d 398 (3d Dep't 1974), order aff'd, 37 N.Y.2d 100, 371 N.Y.S.2d 471, 332 N.E.2d 338 (1975).

Separation-of-powers considerations

(1) In the context of plea agreements, the separation-of-powers doctrine gives the state the authority to enter into plea agreements with a defendant, but the court has the discretion to refuse to accept a plea agreement and is not bound by a plea agreement as to any sentence to be imposed.
Minn.—Johnson v. State, 641 N.W.2d 912 (Minn. 2002).
(2) The state supreme court has the prerogative and power to limit plea bargaining in the municipal courts and, thus, a rule containing an absolute ban against plea negotiations in all drunk-driving cases in municipal court does not violate a separation-of-powers provision of a state constitution; a limited ban on plea bargaining is one aspect of the state supreme court's authority to use plea bargaining in the exercise of its supervening responsibility and authority over the administration of the criminal justice system.
N.J.—State v. Hessen, 145 N.J. 441, 678 A.2d 1082 (1996) (holding modified on other grounds by, State v. Kashi, 180 N.J. 45, 848 A.2d 744 (2004)).

3 U.S.—In re Corrugated Container Antitrust Litigation, 661 F.2d 1145, 9 Fed. R. Evid. Serv. 289, 32 Fed. R. Serv. 2d 932 (7th Cir. 1981), judgment aff'd, 459 U.S. 248, 103 S. Ct. 608, 74 L. Ed. 2d 430, 12 Fed. R. Evid. Serv. 1, 35 Fed. R. Serv. 2d 669 (1983); U.S. v. Hunter, 672 F.2d 815, 10 Fed. R. Evid. Serv. 55 (10th Cir. 1982).

Grant of use immunity

Because a court rule authorizing a trial court to grant use immunity to a witness requires application of the prosecuting attorney, the grant of use immunity under the rule does not interfere with the prosecutorial discretion of the Executive Branch.
N.M.—State v. Brown, 1998-NMSC-037, 126 N.M. 338, 969 P.2d 313 (1998).

Wrongful refusal to grant immunity

The courts will compel a grant of immunity, despite the existence of separation-of-powers concerns, when the defendant demonstrates that the federal government's refusal to grant immunity to an essential defense witness constitutes an abuse of the discretion granted to the government by the Immunity of Witnesses Act.
U.S.—U.S. v. Moussaoui, 382 F.3d 453 (4th Cir. 2004).

4 Colo.—People v. District Court, In and For Tenth Judicial Dist., 632 P.2d 1022 (Colo. 1981).
Kan.—State v. Dedman, 230 Kan. 793, 640 P.2d 1266 (1982).

5 U.S.—In re Grand Jury Proceedings, 613 F.2d 501 (5th Cir. 1980); Menard v. Mitchell, 430 F.2d 486 (D.C. Cir. 1970).
Cal.—Swarthout v. Superior Court, 208 Cal. App. 4th 701, 145 Cal. Rptr. 3d 760 (2d Dist. 2012), as modified on denial of reh'g, (Sept. 4, 2012).
Ohio—Disciplinary Counsel v. Campbell, 126 Ohio St. 3d 150, 2010-Ohio-3265, 931 N.E.2d 558 (2010).

Due process exception

It is desirable to interfere with administrative agency investigations only to the extent required by due process.
Ill.—Illinois Crime Investigating Commission v. Buccieri, 36 Ill. 2d 556, 224 N.E.2d 236 (1967).

Determining scope of activity

A court will not fault law enforcement authorities who permit illicit activity to continue where they have valid reason, such as determining the scope of gambling activities in the local area.
Ga.—Morrow v. State, 147 Ga. App. 395, 249 S.E.2d 110 (1978).

Violations of court orders

The court's authority to investigate violations of court orders does not constitute usurpation by the judiciary of functions exclusively within the province of the Executive Branch and is not unconstitutional.
Cal.—Rosato v. Superior Court, 51 Cal. App. 3d 190, 124 Cal. Rptr. 427 (5th Dist. 1975).

6 Cal.—People v. Superior Court (Greer), 19 Cal. 3d 255, 137 Cal. Rptr. 476, 561 P.2d 1164 (1977).

Agreement between prosecutor and court

A conditional agreement to dismiss charges at a specified future time under an accelerated rehabilitative disposition program is the result of concurrence between the prosecutor and court and does not deviate from constitutional requirements of separation of powers.

Pa.—Com. v. Kindness, 247 Pa. Super. 99, 371 A.2d 1346 (1977).

Information concerning pending cases

The functions of district attorneys are not exclusively executive, and judges can, without violating separation-of-powers principles, require a district attorney to furnish information concerning pending cases in which formal charges have been entered, if for no reason other than to schedule trial.

Ga.—In re Pending Cases, Augusta Judicial Circuit, 234 Ga. 264, 215 S.E.2d 473 (1975).

As to the separation-of-powers doctrine, generally, see § 272.

7 Conn.—State v. Luban, 28 Conn. Supp. 366, 263 A.2d 87 (Super. Ct. 1970).

8 U.S.—People of State of N. Y. v. Baker, 354 F. Supp. 162 (S.D. N.Y. 1973).

Cal.—People v. Superior Court (Greer), 19 Cal. 3d 255, 137 Cal. Rptr. 476, 561 P.2d 1164 (1977).

End of Document

16 C.J.S. Constitutional Law § 439

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

§ 439. Criminal matters—Sentencing, commutation, and penalty decisions

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2545

A court may not initiate habitual offender proceedings or decide if a state can seek the death penalty, but a court does not encroach upon the executive by sentencing a criminal defendant.

A court generally may not initiate habitual offender proceedings.[1] Likewise, a court may not decide if the state can seek the death penalty.[2] For example, a trial court engages in impermissible judicial overreaching when it seeks to usurp the prosecutorial function of choosing whether to seek the death penalty by refusing to accept the defendant's guilty plea pursuant to a plea agreement under which the State has agreed not to seek the death penalty.[3]

The judiciary does not encroach upon the executive by sentencing a criminal defendant.[4] However, the Executive Branch of the government, not the judiciary, has the sole authority to modify a legally imposed criminal sentence after the conviction upon which it is based has become final,[5] and the judiciary cannot encroach upon an executive prerogative such as commutation of a sentence[6] or executive clemency[7] by the paroling or pardoning of criminals.[8]

CUMULATIVE SUPPLEMENT

Cases:

By allowing a motion to revise or revoke sentences when the parole board does not act in accordance with a judge's expectations, the judge is interfering with the executive function; the judge cannot nullify the discretionary actions of the parole board. Committee for Public Counsel Services v. Chief Justice of Trial Court, 484 Mass. 431, 142 N.E.3d 525 (2020), decision aff'd as modified, 2020 WL 2027846 (Mass. 2020).

The judicial branch cannot give itself authority over offenders that are in the state penitentiary by sentencing a person to simultaneous probation and penitentiary sentences; once an offender is within the jurisdiction of the executive branch of government, the judicial branch, the circuit court, loses jurisdiction and control. State v. Orr, 2015 SD 89, 871 N.W.2d 834 (S.D. 2015).

[END OF SUPPLEMENT]

Footnotes

1 Fla.—Burk v. Washington, 713 So. 2d 988 (Fla. 1998).

2 Fla.—Burk v. Washington, 713 So. 2d 988 (Fla. 1998).

Inherent authority exceeded

The trial court exceeded its inherent authority to enforce rules of practice by prohibiting the State from seeking the death penalty in a first-degree murder prosecution, as a sanction for the State's failure to timely file a petition for a special pretrial conference; under the capital sentencing statute, the district attorney could not try the defendant noncapitally if evidence of an aggravating circumstance existed, and thus, the trial court's order was potentially in conflict with the mandate of the general assembly.

N.C.—State v. Rorie, 348 N.C. 266, 500 S.E.2d 77 (1998).

As to the inherent power of the courts, see § 387.

3 Miss.—Moody v. State, 716 So. 2d 592 (Miss. 1998).

4 Ala.—Seritt v. State, 401 So. 2d 248 (Ala. Crim. App. 1981), writ denied, 401 So. 2d 251 (Ala. 1981).

Idaho—State v. Avery, 100 Idaho 409, 599 P.2d 300 (1979).

Mass.—Blaney v. Commissioner of Correction, 374 Mass. 337, 372 N.E.2d 770 (1978).

Reduction of sentence

The trial judge, in reducing the defendant's sentence for drug possession offenses, did not exercise executive powers, such as would violate the state constitution; the judge did not deny the prosecutor the opportunity to indict, or reduce the criminal charges brought by the district attorney, but simply exercised a quintessential judicial power, i.e., the power to sentence, and ultimately concluded that the agreed sentencing recommendation in the plea agreement was more severe than justice permitted.

Mass.—Com. v. Rodriguez, 461 Mass. 256, 962 N.E.2d 711 (2012).

Determination by jury

The jury's determination of the probability that a capital defendant will commit future acts of violence does not violate the separation-of-powers doctrine on the theory that a jury's determination of future conduct invades executive clemency powers administered through the board of pardons and paroles.

Tex.—O'Bryan v. State, 591 S.W.2d 464 (Tex. Crim. App. 1979).

Substitute sentence

The action of the state supreme court, after the death penalty was declared unconstitutional, in affirming a defendant's conviction for first-degree murder but vacating the death sentence and instead imposing the most severe constitutionally permissible sentence established by the legislature for homicide, which was the penalty for second-degree murder, did not violate the doctrine of separation of powers.

U.S.—Calloway v. Blackburn, 612 F.2d 201 (5th Cir. 1980).

Separation-of-powers principles not violated

The district court did not violate separation of powers principles when it determined that the defendant's prior military conviction for housebreaking constituted a "burglary" under the Armed Career Criminal Act; the defendant's prior conviction occurred in a court of military justice rather than a civil court because of his military status, not because of constitutional separation of powers, and the Judicial Branch's recognition of the prior military conviction did not impact either the military's power to shape the charges or it power to sentence those found guilty of those charges.

U.S.—U.S. v. Martinez, 122 F.3d 421 (7th Cir. 1997).

5 Cal.—People v. Lyons, 44 Colo. App. 126, 618 P.2d 673 (App. 1980).

Okla.—State ex rel. Harris v. Smith, 1976 OK CR 10, 545 P.2d 816 (Okla. Crim. App. 1976).

Service of confinement period

Any attempt by a court to impose its will over the executive department as to what constitutes service of a period of confinement would be a nullity and constitute an exercise of power granted exclusively to the executive.

Ga.—Johns v. State, 160 Ga. App. 535, 287 S.E.2d 617 (1981).

6 La.—State v. Weathers, 320 So. 2d 892 (La. 1975).

Tenn.—Rucker v. State, 556 S.W.2d 774 (Tenn. Crim. App. 1977).

Reduction of sentences as violation of separation-of-powers clause

The state constitution clearly entrusts the power of commutation to the Board of Pardons, and a statute empowering the judiciary to reduce sentences already imposed violates the separation-of-powers clause.

Neb.—State v. Bainbridge, 249 Neb. 260, 543 N.W.2d 154 (1996).

Overlapping commutation powers

The imposition of a term of incarceration in a county jail, as a condition of probation, was not judicial intrusion into exclusively executive parole powers; to the extent that the defendant was also subject to the executive commutation power during such term of incarceration, such overlapping commutation powers were permitted under the sentencing scheme set forth in the statutes and constitution of the state.

Nev.—Creps v. State, 94 Nev. 351, 581 P.2d 842 (1978).

7 U.S.—U.S. v. Missio, 597 F.2d 60 (5th Cir. 1979); U.S. v. Lee, 382 F. Supp. 292 (S.D. W. Va. 1974).

Fla.—Johnston v. State, 27 So. 3d 11 (Fla. 2010).

Or.—Haugen v. Kitzhaber, 353 Or. 715, 306 P.3d 592 (2013), cert. denied, 134 S. Ct. 1009, 187 L. Ed. 2d 856 (2014).

Va.—Montgomery v. Com., 62 Va. App. 656, 751 S.E.2d 692 (2013).

8 U.S.—Mann v. U.S., 218 F.2d 936 (4th Cir. 1955).

Cal.—In re Davidson, 207 Cal. App. 4th 1215, 144 Cal. Rptr. 3d 283 (2d Dist. 2012).

Ill.—People v. Lueckfield, 396 Ill. 520, 72 N.E.2d 198 (1947).

Mass.—Com. v. Cole, 468 Mass. 294, 10 N.E.3d 1081 (2014).

Miss.—McGovern v. Mississippi Dept. of Corrections, 89 So. 3d 69 (Miss. Ct. App. 2011).

Okla.—Ex parte Swain, 88 Okla. Crim. 235, 202 P.2d 223 (1949).

Utah—State v. Todd, 2013 UT App 231, 312 P.3d 936 (Utah Ct. App. 2013), cert. denied, 320 P.3d 676 (Utah 2014) and cert. denied, 134 S. Ct. 2309, 189 L. Ed. 2d 190 (2014).

Suspension of sentences

The legislature may exercise its power to give the courts authority to suspend sentences, but the authority must not intrude on the executive's power to pardon.

Tex.—Busby v. State, 984 S.W.2d 627 (Tex. Crim. App. 1998).

Civil rights restoration as act of clemency

Restoration of civil rights to a convicted felon is a part of the pardon power and, as such, is an act of executive clemency not subject to judicial control.

U.S.—Beacham v. Braterman, 300 F. Supp. 182 (S.D. Fla. 1969), judgment aff'd, 396 U.S. 12, 90 S. Ct. 153, 24 L. Ed. 2d 11 (1969).

End of Document

16 C.J.S. Constitutional Law § 440

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

4. Encroachment on, or Interference with, Executive Branch of Government

§ 440. Criminal matters—Prison administration

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2545

Decisions pertaining to the administration of prisons are peculiarly within the province and professional expertise of prison officials, and courts should generally defer to the judgment of prison administrators.

Where prison reform is an executive responsibility, the only function of the courts is to determine whether a constitutional violation has occurred and to fashion a remedy that does no more and no less than correct that particular constitutional violation.[1] Prison administrators should be accorded wide-ranging deference in adoption and execution of policies and practices that, in their judgment, are needed to preserve internal order and discipline and to maintain institutional security.[2] Such considerations are peculiarly within the province and professional expertise of corrections officials, and in the absence of substantial evidence to indicate that prison officials have exaggerated their response to considerations, the courts should ordinarily defer to the judgment of administrators.[3] Even where claims are made under the First Amendment of the United States Constitution, the United States Supreme Court will not substitute its judgment on difficult and sensitive matters of institutional administration for determinations of those charged with the formidable task of running a prison.[4]

Footnotes

1 U.S.—Hoptowit v. Ray, 682 F.2d 1237, 9 Fed. R. Evid. Serv. 1511 (9th Cir. 1982).

Postsentencing order

Absent a demonstrable constitutional violation, the court did not exceed its inherent power in issuing a postsentencing order restricting a federal prisoner's mailing privileges notwithstanding the contention that such an order interfered with the Executive Branch's domain of prison administration.

U.S.—Wheeler v. U.S., 640 F.2d 1116 (9th Cir. 1981).

As to separation-of-powers considerations in prison administration and prisoners' rights cases, see § 419.

2 R.I.—Laurie v. Senecal, 666 A.2d 806 (R.I. 1995).

3 R.I.—Laurie v. Senecal, 666 A.2d 806 (R.I. 1995).

4 U.S.—O'Lone v. Estate of Shabazz, 482 U.S. 342, 107 S. Ct. 2400, 96 L. Ed. 2d 282 (1987).

End of Document

16 C.J.S. Constitutional Law § 441

Corpus Juris Secundum | June 2021 Update

Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

4. Encroachment on, or Interference with, Executive Branch of Government

§ 441. Mandamus, injunction, prohibition, and certiorari

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2543

As a general rule, courts will not interfere with the exercise of discretion by executive officers or boards by issuing prerogative writs or granting extraordinary remedies unless such officers or boards are acting illegally or ministerially.

The courts generally will not interfere with, or control, the exercise of discretion by executive and administrative officers or boards by issuing prerogative writs or granting extraordinary remedies, such as mandamus, injunction, prohibition, or certiorari.[1] However, a court may, through writs or remedies of this character, control such officers or boards where they are acting illegally[2] or where their acts are of a ministerial nature.[3]

A court may order an administrative agency to proceed to hear evidence and determine certain facts, and to report to the court that it has done so, and where there is a refusal so to comply, the court has authority to issue an order requiring the agency to appear and show cause why it should not proceed to comply with the order of the court.[4]

Footnotes

1 U.S.—National Broadcasting Co. v. U.S., 319 U.S. 190, 63 S. Ct. 997, 87 L. Ed. 1344 (1943); Lewis v. Lehigh County, 516 F. Supp. 1369 (E.D. Pa. 1981).
Mich.—State v. Ingham County Circuit Judge, 41 Mich. App. 700, 200 N.W.2d 774 (1972).
Tex.—Beall v. Strake, 609 S.W.2d 885 (Tex. Civ. App. Austin 1980), writ refused n.r.e., (Apr. 15, 1981).
As to the separation-of-powers doctrine, generally, see § 272.
As to encroachment by the courts on the exercise of the powers of governors, see § 434.
As to the nature and scope of, and general grounds for, mandamus, generally, see C.J.S., Mandamus §§ 6 to 47.
As to injunctions to restrain public officers from performing official acts, generally, see C.J.S., Injunctions § 205.
As to standards governing the issuance of certiorari, generally, see C.J.S., Certiorari §§ 6 to 25.
Temporary injunctive relief
In a case involving separation of powers in the federal government, a court must carefully consider the appropriateness of issuing temporary injunctive relief which would substantially interfere with an action taken by the executive pursuant to the latter's evaluation of presidential powers.
U.S.—Lewis v. Carter, 436 F. Supp. 958 (D.D.C. 1977).
Power to issue extraordinary writs
The state supreme court's constitutional power to issue "extraordinary writs" includes the prerogative writs of mandamus, certiorari, prohibition, quo warranto, and habeas corpus and all writs necessary and proper for the court's appellate jurisdiction.
Utah—Petersen v. Utah Bd. of Pardons, 907 P.2d 1148 (Utah 1995).
Mandatory injunctive relief precluded
The separation-of-powers principles preclude the issuance of mandatory injunctive relief, or a mandamus, against the governor.
Mich.—Straus v. Governor, 459 Mich. 526, 592 N.W.2d 53 (1999).

2 U.S.—Glover Const. Co. v. Andrus, 451 F. Supp. 1102 (E.D. Okla. 1978), judgment aff'd, 591 F.2d 554 (10th Cir. 1979), judgment aff'd, 446 U.S. 608, 100 S. Ct. 1905, 64 L. Ed. 2d 548 (1980).
Mass.—Perez v. Boston Housing Authority, 379 Mass. 703, 400 N.E.2d 1231 (1980).
Mich.—Michigan Consol. Gas v. Michigan Public Service Comm., 99 Mich. App. 470, 297 N.W.2d 874 (1980).
Thwarting of function
Where the mere pendency of a hearing before the education commissioner would cloud the validity of a school district, impair the school district's financial standing, thwart its functioning in accordance with the duties and responsibilities of a duly created school district, and undermine the efficacy of a previous order of the state education board, the action of the court in enjoining such a hearing did not constitute wrongful interference by the courts into the administrative process.
Tex.—Westheimer Independent School Dist. v. Brockette, 567 S.W.2d 780 (Tex. 1978).

3 U.S.—S.J. Groves & Sons Co. v. Warren, 135 F.2d 264 (App. D.C. 1943); Fischler v. McCarthy, 117 F. Supp. 643 (S.D. N.Y. 1954), judgment aff'd, 218 F.2d 164 (2d Cir. 1954).
Mass.—Hayes v. City of Brockton, 313 Mass. 641, 48 N.E.2d 683 (1943).

4 Wash.—De Stoop v. Department of Labor and Industries of Washington, 197 Wash. 140, 84 P.2d 706 (1938).

End of Document

16 C.J.S. Constitutional Law § 442

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

4. Encroachment on, or Interference with, Executive Branch of Government

§ 442. Title to office; appointment and removal of officers

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2555

Courts may determine whether a vacancy exists in an office and whether a person has title to, and qualification for, an office.

It is within the jurisdiction of the courts to determine whether a vacancy exists in an office;[1] whether a person elected or appointed to an office has the qualifications prescribed by law;[2] and, where no other method has been provided by the constitution or by statute,[3] to decide a contested election[4] or otherwise pass on the title of a claimant to an office.[5]

However, the qualifications of officers are not subject to judicial review in actions designed to interfere with their administrative acts under their vested powers,[6] and the official action of the governor in issuing a certificate of election to Congress can neither be restrained nor coerced by the courts.[7] Also, imposing a disqualification based on a pending removal proceeding or a past removal based on conduct in a prior term of office constitutes an invasion of the separation of powers.[8]

The judiciary may not interfere with the executive department in the constitutional exercise of its discretion in selecting an appointee,[9] such as a county comptroller,[10] judge,[11] or a special prosecutor.[12] Similarly, since the power to remove an unfaithful or negligent public official is not essentially a judicial power,[13] where full power of removal has been vested in the governor or other executive, the courts may not interfere with the removal of an officer,[14] such as a highway commissioner,[15] mayor,[16] member of a state board of charities and corrections,[17] or a sheriff.[18]

On the other hand, a court may ascertain whether an executive act in appointing an officer is constitutionally authorized,[19] or review an executive determination that an emergency exists, within the meaning of a constitutional provision authorizing provisional appointments in cases of emergency.[20] Furthermore, with respect to removal of officers by executive officers or boards, the courts may inquire whether the law has been infringed[21] or may review the propriety or good faith of their finding of cause.[22] In this connection, courts may confine such officers or boards to their proper sphere of action or require them to exercise their authority.[23]

Officers who perform work in connection with the courts may be removed as an incident of the judicial function.[24]

Suspension.

Where an executive is authorized to suspend particular officers for specified reasons, and the executive has found the reason to exist, his or her finding generally is not open to judicial inquiry.[25] The court is restricted to determining whether the executive acted within his constitutional authority and whether the authorizing statute is constitutionally valid.[26]

CUMULATIVE SUPPLEMENT

Cases:

Governor's decision to remove member from Illinois Prisoner Review Board (IPRB) was not subject to judicial review. Ill. Const. art. 5, § 10. Gregg v. Rauner, 2018 IL 122802, 429 Ill. Dec. 437, 124 N.E.3d 947 (Ill. 2018).

[END OF SUPPLEMENT]

Footnotes

1 Md.—Watkins v. Watkins, 2 Md. 341, 1852 WL 2195 (1852).

2 Ala.—State v. Porter, 1 Ala. 688, 1840 WL 243 (1840).

3 Ark.—Baxter v. Brooks, 29 Ark. 173, 1874 WL 1156 (1874).

4 W. Va.—Williamson v. Musick, 60 W. Va. 59, 53 S.E. 706 (1906).

5 Wis.—State ex rel. Brister v. Weston, 241 Wis. 584, 6 N.W.2d 648 (1942).

6 U.S.—Farmers' Livestock Commission Co. v. U.S., 54 F.2d 375 (E.D. Ill. 1931).

7 Tenn.—Bates v. Taylor, 87 Tenn. 319, 11 S.W. 266 (1889).

8 Iowa—State ex rel. Doyle v. Benda, 319 N.W.2d 264, 4 Ed. Law Rep. 618 (Iowa 1982).

9 U.S.—Hirsch v. U. S., 205 Ct. Cl. 256, 499 F.2d 1248 (1974).
N.J.—Passaic County Bar Ass'n v. Hughes, 108 N.J. Super. 161, 260 A.2d 261 (Ch. Div. 1969).
N.Y.—Larkin v. Sardino, 79 A.D.2d 1096, 435 N.Y.S.2d 843 (4th Dep't 1981).
As to legislative authorization for courts to appoint, remove, or suspend officers, see § 444.

Determination of labor grades

The evaluation of the duties and responsibilities of positions, in determining the labor grades to be assigned to the state's personnel, is executive or administrative rather than judicial.

N.H.—Jeannont v. New Hampshire Personnel Commission, 118 N.H. 597, 392 A.2d 1193 (1978).

Hiring and discharging employees

The courts will not, as a general rule, interfere with the hiring or discharging of employees by the executive department.

U.S.—Washington v. Clark, 84 F. Supp. 964 (D. D.C. 1949), judgment aff'd, 182 F.2d 375 (D.C. Cir. 1950), judgment aff'd, 341 U.S. 923, 71 S. Ct. 795, 95 L. Ed. 1356 (1951); Campbell v. Deviny, 81 F. Supp. 657 (D. D.C. 1949), judgment aff'd, 194 F.2d 881 (D.C. Cir. 1952).

Interim appointments

A court would not be competent to direct the chief executive of a state to exercise the power conferred by the state constitution to make interim appointments to fill vacancies occurring during a recess of the legislature.

N.J.—Passaic County Bar Ass'n v. Hughes, 108 N.J. Super. 161, 260 A.2d 261 (Ch. Div. 1969).

10 S.C.—Bruner v. Smith, 188 S.C. 75, 198 S.E. 184 (1938).

11 Idaho—Home Owner's Loan Corporation v. Stookey, 59 Idaho 267, 81 P.2d 1096 (1938).

12 Or.—State ex inf. Moore v. Farnham, 114 Or. 32, 234 P. 806 (1925).

13 Mass.—In re Opinion of the Justices, 300 Mass. 596, 14 N.E.2d 465, 118 A.L.R. 166 (1938).

Mont.—State ex rel. Holt v. District Court of First Judicial Dist. in and for Lewis and Clark County, 103 Mont. 438, 63 P.2d 1026 (1936).

14 Pa.—Wilt v. Com., Dept. of Revenue, 62 Pa. Commw. 316, 436 A.2d 713 (1981), order aff'd, 498 Pa. 511, 447 A.2d 943 (1982).

Policy

The general question of executive policy involved in the removal of an officer cannot be turned over to the courts.

Mass.—In re Opinion of the Justices, 300 Mass. 596, 14 N.E.2d 465, 118 A.L.R. 166 (1938).

15 Mont.—State ex rel. Matson v. O'Hern, 104 Mont. 126, 65 P.2d 619 (1937).

16 N.Y.—Donnelly v. Roosevelt, 144 Misc. 525, 259 N.Y.S. 356 (Sup 1932).

17 S.D.—Craig v. Jensen, 66 S.D. 93, 278 N.W. 545 (1938).

18 Me.—Fellows v. Eastman, 126 Me. 147, 136 A. 810 (1927).

19 Mont.—State ex rel. Nagle v. Kelsey, 102 Mont. 8, 55 P.2d 685 (1936).

20 Miss.—State ex rel. Parks v. Tucei, 175 Miss. 218, 166 So. 370 (1936).

As to encroachment with legislative determinations of the existence of an emergency, see § 420.

21 Mich.—People ex rel. Johnson v. Coffey, 237 Mich. 591, 213 N.W. 460, 52 A.L.R. 1 (1927).

22 Mass.—In re Opinion of the Justices, 300 Mass. 596, 14 N.E.2d 465, 118 A.L.R. 166 (1938).

Utah—Taylor v. Lee, 119 Utah 302, 226 P.2d 531 (1951).

Review of evidence

In reviewing the evidence on which a governor bases the decision to remove a state officer for cause, in determining whether the governor exceeded his or her authority a court should avoid any improper interference with his or her action, should not substitute its judgment for that of the governor and should sustain the governor's authority to act if there is any competent supporting evidence.

S.D.—Craig v. Jensen, 66 S.D. 93, 278 N.W. 545 (1938).

23 Mont.—State ex rel. Holt v. District Court of First Judicial Dist. in and for Lewis and Clark County, 103 Mont. 438, 63 P.2d 1026 (1936).

24 Mass.—In re Opinion of the Justices, 300 Mass. 596, 14 N.E.2d 465, 118 A.L.R. 166 (1938).

As to the effect of the separation-of-powers doctrine in determining the nature and scope of the powers of governmental departments, see § 384.

25 Colo.—Getty v. Gaffy, 96 Colo. 454, 44 P.2d 506 (1935).

Fla.—State ex rel. Kelly v. Sullivan, 52 So. 2d 422 (Fla. 1951).

26 Colo.—Getty v. Gaffy, 96 Colo. 454, 44 P.2d 506 (1935).

End of Document

16 C.J.S. Constitutional Law § 443

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

5. Powers, Duties, and Acts Under Legislative Authority

§ 443. Grant of nonjudicial powers or administrative powers incidental to judicial duties, generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2561 to 2564

As a general rule, the legislature may not confer exclusively nonjudicial powers on courts or judges, but the courts may be clothed with administrative powers reasonably incidental to the fulfillment of judicial duties.

Generally, in the absence of constitutional provisions to the contrary, the legislature may not confer or impose nonjudicial powers on the judiciary[1] even in the course of, or incidental to, a judicial proceeding.[2] However, the legislature may clothe the courts and judges with powers which are not, by their nature, exclusively either judicial or nonjudicial,[3] or with administrative powers or functions reasonably incidental to the fulfillment of judicial duties,[4] and such minor executive and ministerial functions as may be necessary to the proper operation of the system of government established by the constitution.[5] Furthermore, it is manifestly proper for the legislature to assign additional executive or administrative powers to an officer connected with the judicial department in a nonjudicial capacity.[6]

Moot questions.

The legislature may not authorize or require the courts to decide moot questions not affecting the rights of the parties.[7]

Footnotes

1 Conn.—State v. Clemente, 166 Conn. 501, 353 A.2d 723 (1974).
S.C.—State ex rel. McLeod v. Yonce, 274 S.C. 81, 261 S.E.2d 303 (1979).
W. Va.—State ex rel. Richardson v. County Court of Kanawha County, 138 W. Va. 885, 78 S.E.2d 569 (1953).
As to legislative encroachment on the judiciary, see §§ 284 to 320.
As to delegation of legislative powers to the judiciary, see §§ 355 to 365.
Prohibition against judicial exercise of executive powers not violated
Miscellaneous functions granted to the Special Division, a special court created by the Federal Ethics in Government Act, did not violate the prohibition in Article III of the United States Constitution against judicial exercise of executive powers in that such functions were either passive or essentially ministerial and were analogous to the functions that federal judges performed in other contexts.
U.S.—Morrison v. Olson, 487 U.S. 654, 108 S. Ct. 2597, 101 L. Ed. 2d 569 (1988).

2 Conn.—Adams v. Rubinow, 157 Conn. 150, 251 A.2d 49 (1968).
As to the separation-of-powers doctrine, generally, see § 272.
As to the effect of the separation-of-powers doctrine in determining the nature and scope of the powers of governmental departments, see § 384.
Separation-of-powers considerations
(1) The Ethics in Government Act does not violate the separation-of-powers doctrine by reducing the President's ability to control the prosecutorial powers exercised by an independent counsel appointed pursuant to the Act, in that the Act does not vest Executive Branch functions in either the legislative or Judicial Branches, and provides for the Executive Branch, through the Attorney General of the United States, to initiate an investigation by the independent counsel, to define the counsel's jurisdiction, and to remove the independent counsel for good cause.
U.S.—Morrison v. Olson, 487 U.S. 654, 108 S. Ct. 2597, 101 L. Ed. 2d 569 (1988).
(2) The word "court" in a statute, requiring a "court" to provide forms and clerical assistance to help with the writing and filing of a petition, to advise the petitioner of right to file a motion and affidavit and to sue in forma pauperis, and to assist with the writing and filing of the motion and affidavit, would be interpreted as meaning "clerk of court" and, thus, the statute did not violate the separation-of-powers doctrine.
Minn.—State v. Errington, 310 N.W.2d 681 (Minn. 1981).

3 U.S.—Commissioner of Internal Revenue v. Liberty Bank & Trust Co., 59 F.2d 320 (C.C.A. 6th Cir. 1932).
Fla.—Hearns v. State, 223 So. 2d 738 (Fla. 1969).
R.I.—Weeks v. Personnel Bd. of Review of Town of North Kingstown, 118 R.I. 243, 373 A.2d 176 (1977).
Delegation of adjudicative function to non-Article III body
The constitutionality of a given congressional delegation of adjudicative functions to a non-Article III body must be assessed by reference to the purposes underlying the requirements of Article III of the United States Constitution; such an inquiry is guided by the principle that practical attention to substance, rather than doctrinaire reliance on formal categories, should inform application of Article III.
U.S.—Commodity Futures Trading Com'n v. Schor, 478 U.S. 833, 106 S. Ct. 3245, 92 L. Ed. 2d 675 (1986).

4 U.S.—Pope v. U.S., 323 U.S. 1, 65 S. Ct. 16, 89 L. Ed. 3 (1944).
Conn.—Adams v. Rubinow, 157 Conn. 150, 251 A.2d 49 (1968).
R.I.—Weeks v. Personnel Bd. of Review of Town of North Kingstown, 118 R.I. 243, 373 A.2d 176 (1977).
Powers limited to those prescribed
Where the legislature confers administrative matters on a court, the court must act in a manner and within the limitations prescribed, and the court's decrees will have the effect which the legislature has designated that they should have.

Mass.—Russell Box Co. v. Commissioner of Corporations & Taxation, 325 Mass. 536, 91 N.E.2d 750 (1950).

5 U.S.—Farmington Tp. v. Warrenville State Bank, 185 F.2d 260 (6th Cir. 1950).
Ill.—Hill v. Relyea, 34 Ill. 2d 552, 216 N.E.2d 795 (1966).
Idaho—Penrod v. Crowley, 82 Idaho 511, 356 P.2d 73 (1960).

6 Ky.—Burton v. Mayer, 274 Ky. 245, 118 S.W.2d 161 (1938).
As to authorization by the legislature of judicial appointment of officers, see § 444.

7 U.S.—U.S. v. Evans, 213 U.S. 297, 29 S. Ct. 507, 53 L. Ed. 803 (1909).
As to the necessity of the existence of a case or controversy to the jurisdiction of the federal courts, see § 390.

End of Document

16 C.J.S. Constitutional Law § 444

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

5. Powers, Duties, and Acts Under Legislative Authority

§ 444. Power of appointment, suspension, or removal of officers

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2561 to 2564

In the absence of a constitutional provision to the contrary, the legislature may authorize judicial appointment of officers, in connection with the exercise of judicial powers, duties, and functions, and a court may be authorized to remove or suspend officers or to exercise its judicial powers in connection with their removal or suspension.

In the absence of a constitutional provision to the contrary, the legislature may authorize courts or judges, in aid of, or in connection with, the exercise of their judicial powers, duties, and functions, to appoint officers, including those whose duties are not strictly judicial.[1] Thus, the courts may be authorized to appoint various officers,[2] such as tax collectors,[3] receivers,[4] public defenders,[5] state's attorneys,[6] court officers and employees,[7] probation officers,[8] magistrates,[9] and expert witnesses.[10]

On the other hand, unless the constitution provides otherwise, the legislature may not authorize or require courts to appoint officers who have nothing to do with the administration of justice.[11] The appointment of officers not connected with the machinery of the court, such as election supervisors, cannot be conferred on the judges because of the tripartite separation of powers.[12]

Courts may be authorized, by statute, to remove an officer.[13] However, the courts may not be charged with purely executive or administrative functions, insofar as the removal of officers is concerned.[14]

Footnotes

1 Colo.—People v. Mullins, 188 Colo. 29, 532 P.2d 736 (1975).
Conn.—State v. McLucas, 172 Conn. 542, 375 A.2d 1014 (1977).
La.—McGee v. Lee, 328 So. 2d 159 (La. 1976).
As to interference by the judiciary with the executive department's exercise of authority to appoint, remove, or suspend officers, see § 442.

2 Ind.—State ex rel. Buttz v. Marion Circuit Court, 225 Ind. 7, 72 N.E.2d 225, 170 A.L.R. 187 (1947).
Mass.—Lachapelle v. United Shoe Machinery Corp., 318 Mass. 166, 61 N.E.2d 8 (1945).
N.H.—Wheeler ex rel. Boulanger v. Morin, 93 N.H. 40, 35 A.2d 513 (1943).
Appointment of independent counsel
Appointment of an independent counsel by the Special Division, a special court created by the Federal Ethics in Government Act, does not violate the Appointments Clause of the United State Constitution, and the appointment of such an inferior officer by the court does not run afoul of the constitutional limitation on "incongruous" inter-branch appointments, in that the judges of the Special Division are not allowed to participate in any matters relating to the independent counsel they have appointed.
U.S.—Morrison v. Olson, 487 U.S. 654, 108 S. Ct. 2597, 101 L. Ed. 2d 569 (1988).

3 U.S.—Campbellsville Lumber Co. v. Hubbert, 112 F. 718 (C.C.A. 6th Cir. 1902), aff'd, 191 U.S. 70, 24 S. Ct. 28, 48 L. Ed. 101 (1903).
Ark.—Newton v. Edwards, 203 Ark. 18, 155 S.W.2d 591 (1941).

4 Fla.—Little River Valley Drainage Dist. v. First State Sav. Bank of Morenci, Mich., 123 Fla. 581, 167 So. 376 (1936).
Ky.—Veail v. Louisville and Jefferson County Metropolitan Sewer Dist., 303 Ky. 248, 197 S.W.2d 413 (1946).
Mich.—Parr v. Ladd, 323 Mich. 592, 36 N.W.2d 157, 8 A.L.R.2d 357 (1949).

5 Colo.—People v. Mullins, 188 Colo. 29, 532 P.2d 736 (1975).

6 Conn.—State v. McLucas, 172 Conn. 542, 375 A.2d 1014 (1977).

7 Conn.—Adams v. Rubinow, 157 Conn. 150, 251 A.2d 49 (1968).

8 Ohio—State ex rel. Gordon v. Zangerle, 136 Ohio St. 371, 16 Ohio Op. 536, 26 N.E.2d 190 (1940).

9 Ind.—Petition for Appointment of Magistrates for City of Beech Grove, 216 Ind. 417, 24 N.E.2d 773 (1940).

10 Cal.—People v. Strong, 114 Cal. App. 522, 300 P. 84 (2d Dist. 1931).
Wis.—Jessner v. State, 202 Wis. 184, 231 N.W. 634, 71 A.L.R. 1005 (1930).
Mental health experts
Appointment of experts in mental diseases to examine a defendant in a capital case, as a basis for their opinion as to the defendant's sanity, constitutes a judicial function.
Ala.—Hunt v. State, 248 Ala. 217, 27 So. 2d 186 (1946).

11 Minn.—State v. District Court of Hennepin County, 185 Minn. 396, 241 N.W. 39 (1932).
Mont.—Application of O'Sullivan, 117 Mont. 295, 158 P.2d 306, 161 A.L.R. 487 (1945).
Elected or executive officers
Members of the judiciary cannot be required to appoint elected or executive officers.
Mass.—In re Opinion of the Justices, 300 Mass. 596, 14 N.E.2d 465, 118 A.L.R. 166 (1938).

12 Mass.—In re Supervisors of Election, 114 Mass. 247, 1873 WL 9212 (1873).
As to the separation-of-powers doctrine, generally, see § 272.
As to the effect of the separation-of-powers doctrine in determining the nature and scope of the powers of governmental departments, see § 384.

13 Mass.—Lachapelle v. United Shoe Machinery Corp., 318 Mass. 166, 61 N.E.2d 8 (1945).
W. Va.—Arkle v. Board of Com'rs, 41 W. Va. 471, 23 S.E. 804 (1895).
Power of removal included in power of appointment

A statute authorizing a court to appoint a fiscal agent for a county is not unconstitutional because a section of the statute which requires a fiscal agent to submit quarterly reports impliedly grants the power of removal and imposes on the court a duty of judicial surveillance of the doings of the fiscal agent, and the power of appointment normally includes the power of removal.

N.H.—Wheeler ex rel. Boulanger v. Morin, 93 N.H. 40, 35 A.2d 513 (1943).

Termination of office of independent counsel

A provision if the Federal Ethics in Government Act giving the Special Division the power to terminate the office of independent counsel does not violate the prohibition in Article III of the United States Constitution against judicial exercise of executive power in that such a termination may occur only when the duties of the independent counsel are completed or so substantially completed that there is no need for any continued action by the independent counsel.

U.S.—Morrison v. Olson, 487 U.S. 654, 108 S. Ct. 2597, 101 L. Ed. 2d 569 (1988).

Removal of county register of probate

Removal of the county register of probate from the office by the supreme judicial court, pursuant to its statutory authority, does not violate the separation of powers provision of the state constitution.

Mass.—In re Antonelli, 429 Mass. 644, 711 N.E.2d 104 (1999).

14 Mass.—In re Opinion of the Justices, 300 Mass. 596, 14 N.E.2d 465, 118 A.L.R. 166 (1938).

Mich.—Koeper v. Street Ry. Commission of City of Detroit, 222 Mich. 464, 193 N.W. 221 (1923).

N.Y.—In re Richardson, 247 N.Y. 401, 160 N.E. 655 (1928).

End of Document

16 C.J.S. Constitutional Law § 445

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

5. Powers, Duties, and Acts Under Legislative Authority

§ 445. Appeal to court from action of nonjudicial body

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2561 to 2564

Statutes authorizing appeals to a court from the action of nonjudicial bodies are unconstitutional insofar as they purport to foist nonjudicial functions on the court or authorize it to invade the powers of such bodies, but they are valid where they authorize an appeal of a judicial character.

A statute authorizing an appeal to a court from actions of a nonjudicial body is unconstitutional insofar as it purports to foist nonjudicial functions on the court,[1] or invade the powers of such a body,[2] as by empowering a court to control its executive or administrative discretion.[3] On the other hand, statutes are not unconstitutional on such grounds where they authorize an appeal of an essentially judicial character[4] as where the statute simply authorizes a court to determine whether the body acted within its jurisdiction and proceeded according to law[5] or authorizes an appeal from its judicial or quasi-judicial acts.[6] Thus, a statute may properly require a trial de novo upon appeal.[7]

Footnotes

1 Mich.—City of Detroit v. Division 26 of Amalgamated Ass'n of Street, Elec. Ry. & Motor Coach Employees of America, 332 Mich. 237, 51 N.W.2d 228 (1952).
Tex.—Gerst v. Nixon, 411 S.W.2d 350 (Tex. 1966).
Wash.—Household Finance Corp. v. State, 40 Wash. 2d 451, 244 P.2d 260 (1952).
W. Va.—Mason County Bd. of Educ. v. State Superintendent of Schools, 160 W. Va. 348, 234 S.E.2d 321 (1977).
United States Supreme Court
U.S.—Federal Radio Commission v. Nelson Bros. Bond & Mortg. Co. (Station WIBO), 289 U.S. 266, 53 S. Ct. 627, 77 L. Ed. 1166, 89 A.L.R. 406 (1933).

2 Mich.—City Smoked Fish Co. v. Michigan Dept. of Agriculture, Food Inspection Division, 47 Mich. App. 125, 209 N.W.2d 267 (1973).
Mont.—Peterson v. Livestock Commission, 120 Mont. 140, 181 P.2d 152 (1947).
N.Y.—People v. Bunge Corp., 25 N.Y.2d 91, 302 N.Y.S.2d 785, 250 N.E.2d 204 (1969).

3 U.S.—Aimcee Wholesale Corp. v. U.S., 66 Cust. Ct. 155, 324 F. Supp. 514 (Cust. Ct. 2 Div. 1971), decision aff'd, 468 F.2d 202 (C.C.P.A. 1972).
Ky.—American Beauty Homes Corp. v. Louisville and Jefferson County Planning and Zoning Commission, 379 S.W.2d 450 (Ky. 1964).
As to encroachment by the judiciary on the powers of administrative agencies, see § 432.
Intrusion upon domain entrusted to administrative agency
An appellate court may not intrude upon the domain which Congress has exclusively entrusted to an administrative agency.
U.S.—I.N.S. v. Orlando Ventura, 537 U.S. 12, 123 S. Ct. 353, 154 L. Ed. 2d 272 (2002).

4 Fla.—Conner v. Joe Hatton, Inc., 216 So. 2d 209 (Fla. 1968).
Md.—State Ins. Commissioner v. National Bureau of Cas. Underwriters, 248 Md. 292, 236 A.2d 282 (1967).
Mass.—Springgate v. School Committee of Mattapoisett, 11 Mass. App. Ct. 304, 415 N.E.2d 888 (1981).

5 U.S.—I.N.S. v. Chadha, 462 U.S. 919, 103 S. Ct. 2764, 77 L. Ed. 2d 317 (1983).
Mass.—Massachusetts Bonding & Ins. Co. v. Commissioner of Ins., 329 Mass. 265, 107 N.E.2d 807 (1952).
Miss.—City of Meridian v. Davidson, 211 Miss. 683, 53 So. 2d 48 (1951).
Delegation of nonjudicial powers not presumed
It will not be presumed that the legislature intended to confer on the courts powers inconsistent with the discharge of their inherent judicial functions.
S.D.—Application of Dakota Transportation of Sioux Falls, 67 S.D. 221, 291 N.W. 589 (1940).
Taxation; review or determination of assessed value of property
Taxation of property is a legislative, rather than judicial, function and under limitations expressed in the state constitution, except in cases of fraud, the courts have no authority to review or determine the value of property which has been assessed by appropriate administrative officers.
Ill.—Illinois Bell Telephone Co. v. Rosewell, 82 Ill. App. 3d 975, 38 Ill. Dec. 431, 403 N.E.2d 662 (1st Dist. 1980).

6 Ala.—Ex parte Darnell, 262 Ala. 71, 76 So. 2d 770 (1954).
Ill.—Harrison v. Civil Service Commission of City of Chicago, 1 Ill. 2d 137, 115 N.E.2d 521 (1953).
Wash.—Floyd v. Department of Labor and Industries, 44 Wash. 2d 560, 269 P.2d 563 (1954).

7 Alaska—Matanuska-Susitna Borough v. Lum, 538 P.2d 994 (Alaska 1975).
Ky.—Osborne v. Bullitt County Bd. of Ed., 415 S.W.2d 607 (Ky. 1967).
Tex.—Department of Public Safety v. Petty, 482 S.W.2d 949 (Tex. Civ. App. Austin 1972), writ refused n.r.e., (Oct. 25, 1972).

End of Document

16 C.J.S. Constitutional Law § 446

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

IV. Distribution of Governmental Powers and Functions

C. Judicial Powers and Functions

5. Powers, Duties, and Acts Under Legislative Authority

§ 446. Miscellaneous powers

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2561 to 2564

Although nonjudicial powers may not be conferred on the courts, various powers connected with the administration of justice may be conferred on them.

Various statutes conferring on courts or judges nonjudicial authority are valid, such as those conferring authority to deal with the professional conduct of attorneys,[1] or authority concerning criminal matters,[2] elections,[3] highways,[4] licenses,[5] process,[6] and taxation.[7] On the other hand, a statute may be void for attempting to confer executive or administrative authority on courts or judges,[8] such as authority with respect to commutation of criminal sentences,[9] licenses,[10] and taxation.[11]

Footnotes

1 Ky.—In re Sparks, 267 Ky. 93, 101 S.W.2d 194 (1936).
Mass.—Lachapelle v. United Shoe Machinery Corp., 318 Mass. 166, 61 N.E.2d 8 (1945).

2 U.S.—Salvaggio v. Cotter, 324 F. Supp. 681 (D. Conn. 1971), order aff'd, 447 F.2d 1406 (2d Cir. 1971).

Ill.—People v. Farr, 63 Ill. 2d 209, 347 N.E.2d 146 (1976).

Ohio—In re Metzenbaum, 26 Ohio Misc. 47, 54 Ohio Op. 2d 149, 55 Ohio Op. 2d 98, 265 N.E.2d 345 (C.P. 1970).

As to the separation-of-powers doctrine, generally, see § 272.

As to the effect of the separation-of-powers doctrine in determining the nature and scope of the powers of governmental departments, see § 384.

Separation-of-powers clause not violated

A statute does not violate the separation-of-powers clause of the state constitution, on the theory that it permits the Judicial Branch to exercise prosecutorial functions, by allowing a court to dismiss a case without prosecutorial consent, where the statute is an extremely narrow one applied in a remedial fashion to a small group of individuals who must meet specific criteria, and whatever overlap in functions the statute involves is insignificant.

Mich.—People v. Trinity, 189 Mich. App. 19, 471 N.W.2d 626 (1991).

Review of parole release orders

A statute authorizing the sentencing judge to retain jurisdiction to review certain parole release orders did not violate the separation of powers provision of the federal constitution.

Fla.—Burley v. State, 408 So. 2d 830 (Fla. 5th DCA 1982).

3 Ark.—Yarbrough v. Beardon, 206 Ark. 553, 177 S.W.2d 38 (1944).

Conn.—In re Gilhuly, 124 Conn. 271, 199 A. 436 (1938).

Ohio—In re Metzenbaum, 26 Ohio Misc. 47, 54 Ohio Op. 2d 149, 55 Ohio Op. 2d 98, 265 N.E.2d 345 (C.P. 1970).

4 Conn.—Connecticut Light & Power Co. v. Town of Southbury, 95 Conn. 242, 111 A. 363 (1920).

5 Ill.—People v. Farr, 63 Ill. 2d 209, 347 N.E.2d 146 (1976).

6 Kan.—State v. Howat, 109 Kan. 376, 198 P. 686, 25 A.L.R. 1210 (1921).

7 Mont.—International Business Machine Corporation v. Lewis and Clark County, 111 Mont. 384, 112 P.2d 477 (1941).

8 Ill.—People ex rel. Christiansen v. Connell, 2 Ill. 2d 332, 118 N.E.2d 262 (1954).

Okla.—State v. Juvenile Division, Tulsa County Dist. Court, 1977 OK CR 49, 560 P.2d 974 (Okla. Crim. App. 1977).

S.D.—Application of Nelson, 83 S.D. 611, 163 N.W.2d 533 (1968).

W. Va.—State ex rel. Richardson v. County Court of Kanawha County, 138 W. Va. 885, 78 S.E.2d 569 (1953).

9 Colo.—People v. Simms, 186 Colo. 447, 528 P.2d 228 (1974).

Mich.—In re Grand Jury Proceedings No. 93,164, 384 Mich. 24, 179 N.W.2d 383 (1970).

Jury finding

A statute authorizing the manner in which a jury may qualify its verdict in a capital case was unconstitutional insofar as it allowed the jury to find the defendant guilty without the benefit of commutation of the sentence, since the power to commute a sentence is incidental and akin to the power to pardon, restricted to the governor by the constitution.

La.—State v. Varice, 292 So. 2d 703 (La. 1974).

Resentencing statute

A resentencing statute, as sought to be applied on the basis of an inmate's "progress toward a noncriminal way of life," was an unconstitutional attempt to invest the judiciary with a power expressly and exclusively granted by the state constitution to the governor.

Me.—State v. Hunter, 447 A.2d 797 (Me. 1982).

10 Ind.—State Board of Medical Registration and Examination v. Scherer, 221 Ind. 92, 46 N.E.2d 602 (1943).

Md.—Brashears v. Lindenbaum, 189 Md. 619, 56 A.2d 844 (1948).

W. Va.—State v. Huber, 129 W. Va. 198, 40 S.E.2d 11, 168 A.L.R. 808 (1946).

Doing business

Granting or withholding of a permit, certificate, or authority to do business in a statutorily regulated commercial endeavor is an administrative function, and under a constitutional provision concerning separation of powers, such a function cannot be delegated to the judiciary.

Tex.—Gerst v. Nixon, 411 S.W.2d 350 (Tex. 1966).

11 Ill.—People ex rel. Clark v. Baltimore & O.S.W. Ry. Co., 353 Ill. 492, 187 N.E. 463 (1933).

Iowa—In re Bowdoin St., City of Des Moines, 240 Iowa 64, 35 N.W.2d 571 (1949).

Minn.—Kalscheuer v. State, 214 Minn. 441, 8 N.W.2d 624 (1943).

Levy and assessment

W. Va.—Columbia Gas Transmission Corp. v. E. I. du Pont de Nemours & Co., 159 W. Va. 1, 217 S.E.2d 919 (1975).

End of Document